



# International Labour Conference

TWENTIETH SESSION  
GENEVA, 1936

## The Regulation of Certain Special Systems of Recruiting Workers

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First Item on the Agenda



GENEVA

International Labour Office

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1936

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GENEVA, SWITZERLAND

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# INTRODUCTION

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At its Sixty-fourth Session (October 1933), the Governing Body of the International Labour Office placed on the agenda of the Nineteenth (1935) Session of the International Labour Conference for first discussion the question of "the recruiting of labour in colonies and in other territories with analogous labour conditions". Accordingly the International Labour Office, in pursuance of the Standing Orders of the Conference, prepared a Grey Report containing an analysis of the law and practice relating to recruiting in the various territories concerned, the text of the principles concerning recruiting adopted by the Committee of Experts on Native Labour, and a draft list of points on which it was suggested that the Governments should be consulted in preparation for the second discussion in 1936. The Nineteenth Session of the Conference took this Report as a basis of discussion and, after adopting a list of points for the consultation of Governments, decided to place the question on the agenda of the Twentieth (1936) Session for second discussion in the following form: "The regulation of certain special systems of recruiting workers". The Office, therefore, prepared the Questionnaire required by the Standing Orders on the basis of the list of points adopted by the Conference, and communicated the Questionnaire to the Governments in July 1935.

The present Report has been prepared after examination of the replies of the Governments to this Questionnaire. The replies themselves are reproduced in Chapter I; a general survey of the question in the light of the replies is given in Chapter II; the conclusions to which the International Labour Office has been led by this survey are contained in Chapter III in the form of a commentary on the proposals which follow and which the Office submits to the Twentieth Session of the Conference as a basis of discussion with a view to a final decision on the question on the agenda.

In communicating the Questionnaire to Governments, the Office requested that replies might be forwarded in time to reach it not later than 1 December 1935. At the time this Report was

prepared, replies had been received from the Governments of the following twenty-six States Members: Austria, Belgium, Brazil, Bulgaria, Chile, China, Colombia, Denmark, Estonia, Finland, France, Great Britain, Hungary, India, Iraq, Irish Free State, Italy, Japan, Netherlands, New Zealand, Norway, Spain, Switzerland, Union of South Africa, United States of America, and Yugoslavia. Any further replies that may be received will be published in a supplementary Report.

Geneva, *March 1936.*

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## CHAPTER I

### REPLIES OF THE GOVERNMENTS TO THE QUESTIONNAIRE

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The Governments of the following countries did not reply to the Questionnaire in detail : Austria, Brazil, Colombia, Denmark, Estonia, Finland, Hungary, Irish Free State, Japan, New Zealand, Norway, Switzerland, the United States of America. The general statements made by these Governments are reproduced below.

#### AUSTRIA

The Government refrains from replying to this Questionnaire as the subject concerns only countries with colonial possessions and does not, therefore, affect Austria.

#### BRAZIL

The Brazilian Constitution, assuring, as it does, to Brazilians and to foreigners residing in Brazil the inviolability of their rights relating to freedom of subsistence, the security of the individual and of property, does not admit of forced labour or of any interference with freedom of labour.

Under these conditions the Government will give its unqualified support to all measures tending to suppress forced labour of any kind and will aid the efforts of the International Labour Office in order that every possible action may be taken with this object in view.

As the provisions laid down in the proposed Convention would not be applicable in Brazil, the Government refrains from replying in detail to the Questionnaire.

#### COLOMBIA

The necessity for any special regulation of the engagement of workers has not so far made itself felt in Colombia since, owing to the industrial conditions in the country, contracts of employment are concluded by free engagement between the heads of undertakings and the workers on the general basis that the rights of all the parties concerned are protected.

The question, however, is undoubtedly one of great importance in countries of advanced industrial and commercial development, faced with the problems of unemployment affecting many thousands of men and the necessity for rigorous specialisation owing to the size and complexity of industries.

#### DENMARK

The practice of recruiting workers being non-existent in Denmark, experience in the matter of its organisation is lacking. The Government is unable, therefore, to contribute usefully towards the solution of this problem and considers that it should refrain from replying in detail to the Questionnaire.

#### ESTONIA

The Questionnaire deals with the recruiting of labour in colonies and other territories with analogous labour conditions. Estonia, not having any colonies, is not directly concerned and is not in a position to reply to the various points of the Questionnaire, as it has no experience whatever in the matter. Nevertheless, the Government is of opinion that the adoption by the International Labour Conference of a Draft Convention for the regulation of certain special systems of recruiting workers may be a matter of some importance to those countries that have colonies.

#### FINLAND

The Government does not feel called upon to reply to this Questionnaire, as the matter does not concern Finland.

#### HUNGARY

Questionnaire I, relative to the regulation of certain special systems of recruiting workers, deals with the recruiting of persons who do not offer their services voluntarily; such recruiting could, therefore, take place only in colonies or in territories falling, from the point of view of recruiting, into the same category. As Hungary has no colonies or analogous territories where this system of recruiting could be applied, the Government is not in a position to deal with the question.

#### IRISH FREE STATE

The Government of Saorstát Eireann has considered the Questionnaire on the Regulation of Certain Special Systems of Recruiting Workers.

As this subject is not one in which the Saorstát has at present any direct concern, the Government is of opinion that it would not serve any useful purpose by furnishing detailed replies to the Ques-

tionnaire. The Government is, however, in favour of any measures aimed at the removal or mitigation of abuses in the recruiting of workers of the classes referred to in the Questionnaire.

## JAPAN

The Government is in principle in favour of the adoption of international regulations and of a Recommendation on this question. However, in view of the present situation of Japan, which does not permit of immediate compliance with the provisions of such regulations, the Government's attitude is one of reserve.

## NEW ZEALAND

(1) There is no recruiting, in terms of the definition contained in Sections II and III of the Questionnaire relating to the proposed Draft Convention, in New Zealand, or in any of its dependencies, including the Cook Islands.

(2) In the Mandated Territory of Western Samoa there is, in the Territory itself, no recruiting in terms of the definition contained in Sections II and III of the Questionnaire.

(3) In that Territory, however, there is little or no necessity for the indigenous inhabitants to accept employment, and for the purpose of obtaining labour for plantations and other undertakings in the Territory, both public and private, it is necessary to import labour.

(4) Arrangements for this purpose are made by virtue of an Ordinance entitled The Labour Ordinance, 1933.

(5) The recruiting of labour for this purpose takes place in Hong Kong under the supervision of the Government of that Colony. All arrangements for the recruiting, the transport, the employment in Western Samoa, and the return to their homes of the coolies so recruited, are made directly by the Administration of Western Samoa.

(6) The whole course of the transaction is accordingly under the direct supervision of the Administration, which provides a special Officer to safeguard the welfare of the coolies while in the Territory, to whom the coolies have free right of direct access, as well as to a Chinese Consular Officer located in the Territory:

(7) In view of the fact that the provision of imported labour for Western Samoa is entirely an activity of the Administration of the Territory conducted throughout in collaboration with the Government of Hong Kong, and that the Draft Convention now proposed could have no other possible application to New Zealand or to Western Samoa, the New Zealand Government feel that no useful purpose would be served by answering the Questionnaire point by point.

(8) The requirements contemplated by Part VII of the Questionnaire are, of course, fully complied with in Western Samoa.

## NORWAY

The Norwegian Government considers it desirable that the regulation of certain special systems of recruiting workers should be dealt with internationally and that a Draft Convention in conformity with



the lines drawn up in the Questionnaire should be adopted. As, however, "recruiting" as defined in the Questionnaire does not exist in Norway, the Government abstains from answering the Questionnaire in detail.

#### SWITZERLAND

The problem of regulating certain special systems of recruiting workers is of practical interest only for extra-European countries and the Colonial Powers. The Swiss Government therefore refrains for the present from giving any reply to the Questionnaire ; but in principle it approves, for humanitarian reasons, any proposal calculated to improve the lot of workers in the countries affected.

#### UNITED STATES OF AMERICA

As the labour conditions referred to in this Questionnaire are believed to be non-existent in the United States, the Government feels that it can contribute nothing of value to the information necessary to draft a satisfactory Convention. The Government, however, is in entire sympathy with the purpose of the proposed Convention as indicated in the Questionnaire and in preliminary discussions of the subject by the Conference in 1935.

\* \* \*

The Governments of the following countries furnished detailed replies to the Questionnaire : Belgium, Bulgaria, Chile, China, France, Great Britain, India, Iraq, Italy, the Netherlands, Spain, the Union of South Africa, Yugoslavia. The replies of these Governments to the various questions, grouped according to their subject-matter, are reproduced below.

### THE REGULATION OF CERTAIN SPECIAL SYSTEMS OF RECRUITING WORKERS

#### I. FORM OF THE INTERNATIONAL REGULATIONS

1. Do you consider it desirable that the International Labour Conference should adopt a Draft Convention providing for the regulation of certain special systems of recruiting workers?

#### BELGIUM

1. The reply is in the affirmative.

#### BULGARIA

1. The reply is in the affirmative.

## CHILE

1. The reply is in the affirmative.

## CHINA

1. The reply is in the affirmative.

## FRANCE

*Preliminary observations.* — The Government replies in the affirmative to all the questions in the Questionnaire, except in regard to the questions mentioned below.

Moreover, it is observed that in framing the Draft Convention on the basis of the replies from Governments, it would be best to include only general provisions, leaving the methods of application to a very large extent to be dealt with in the national and local laws and regulations.

1. The reply is in the affirmative. But the wording originally proposed for describing the purpose of the Convention would be better : Draft Convention concerning the recruiting (instead of "providing for the regulation of certain special systems of recruiting ") of workers in colonies and in other territories with analogous labour conditions. That definition seems to meet the purpose in view better than the new one.

## GREAT BRITAIN

1. The reply is in the affirmative.

## INDIA

1. The Government of India see no objection to the adoption by the International Labour Conference of a Draft Convention providing for the regulation of certain special systems of recruiting workers for service outside their country. The Convention contemplated by the Questionnaire goes far beyond this and envisages rigorous and detailed control for internal recruitment of labour. The Government of India are opposed to such control except so far as it is rendered necessary by the existence of abuses and serious dangers. They have in the past adopted legislative and other measures for the purpose of checking abuses where they occurred, but the ideal they have constantly kept in view is that of free recruitment within India itself and their policy is to keep the restrictions at a minimum and to reduce or remove the existing ones as and when conditions permit. While, therefore, they see no objection to the adoption of a Draft Convention providing for the regulation of extra-territorial recruitment, they are not satisfied that the control of intra-territorial recruitment is a suitable subject for international regulation.

#### ‘IRAQ

1. In ‘Iraq the practice of recruiting workers, who do not spontaneously offer their services, is non-existent, except in extreme cases of national emergency for public purposes. The Government, however, considers that such practice should, where in existence, be controlled by State legislation and therefore supports the proposal that the *International Labour Conference* should adopt a Draft Convention providing for the regulation of certain special systems of recruiting workers.

#### ITALY

1. The Government considers it desirable that the *International Labour Conference* should adopt a Draft Convention providing for the regulation of certain special systems of recruiting workers. .

#### NETHERLANDS

1. The Netherlands Government considers that international regulation such as that contemplated here is desirable.

#### SPAIN

1. The reply is in the affirmative, since the provisions of a Convention would be binding on the States ratifying it.

#### UNION OF SOUTH AFRICA

1. The reply is in the affirmative.

#### YUGOSLAVIA

1. The Government considers it desirable that the *International Labour Conference* should adopt a Draft Convention providing for the regulation of certain special systems of recruiting workers.

## II. SCOPE OF THE INTERNATIONAL REGULATIONS

### *Definition of Recruiting*

2. Do you consider that the systems of recruiting to be regulated are adequately defined by the following formula:

“Any operation or operations undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services either at the place of employment or at a public emigration or employment office or at an office of an employers’ organisation under public supervision” ?

*Exceptions to the Definition*

3. (i) Do you consider that it should be open to the competent authorities to prescribe that the above definition shall not be deemed to include recruiting operations undertaken by employers :

(a) who do not employ more than a limited number of workers ;

(b) within a specified radius from the place of employment ?

(ii) If the reply to (i) is in the affirmative, should the precise limitations be :

(a) left to the national law and regulations ; or

(b) prescribed in the Draft Convention ?

(iii) If the course indicated in (ii) (b) is adopted, what limitations of number and radius do you propose ?

4. Are there any other cases in which it should be open to the competent authorities to provide that recruiting operations shall not be deemed to be included in the above definition ?

BELGIUM

2. The reply is in the affirmative.

3. (i) (a) and (b) The reply is in the affirmative.

(ii) (a) The reply is in the affirmative.

(b) The reply is in the negative.

4. No other cases are at present foreseen which it should be open to the competent authority to exclude.

BULGARIA

2. The reply is in the affirmative.

3. The reply is in the affirmative.

4. The reply is in the negative.

CHILE

2. The reply is in the affirmative.

3. (i) (a) and (b) The reply is in the affirmative.

(ii) (a) The reply is in the affirmative.

(b) The reply is in the negative.

4. The reply is in the negative.

CHINA

2. The reply is in the affirmative.
3. (i) The reply is in the affirmative.  
(ii) The precise limitations should be prescribed in the Draft Convention.  
(iii) (No reply is given.)
4. The reply is in the negative.

FRANCE

2. The reply is in the affirmative.

3 and 4. As regards the approved exceptions to the proposed definition, these exceptions might either be defined in the Draft Convention or might be left to the discretion of the competent authorities. In any case, the determination of the number of workers and of the distance from the place of employment should be left to the national laws and regulations or local governments.

GREAT BRITAIN

2. (1) The Government agree that, as regards the kinds of recruiting operations which it is intended shall be regulated in accordance with the provisions of the proposed Convention, the definition suggested in this Question is suitable.

(2) It is, however, necessary to observe that the definition would not exclude the operations of certain employment agencies in the United Kingdom to which the Government could not agree to apply the provisions of the Convention. Some of these agencies are run as private enterprises, some by philanthropic organisations, while others are conducted by various organisations of employers or workers (but not under public supervision). They are concerned with a great variety of occupations, e.g. theatrical employment, domestic service, work in hotels and restaurants, and various other forms of labour, both manual and non-manual.

(3) Moreover, having regard to the change in the title of the subject, which was made at the Nineteenth Session of the Conference, there is now nothing to indicate the kinds of territories in which it is intended that the provisions of the Convention should be applied. Ratification by the Government would therefore constitute an undertaking to apply the provisions of the Convention in the United Kingdom.

(4) It has not been found possible to devise an amendment of the suggested definition of "Recruiting" which would exclude operations which should properly fall outside its scope, without, at the same time, unduly restricting the field in which the provisions of the Convention ought to be applied. The Government have accordingly been forced to the conclusion that the only practicable solution of the difficulty would be to insert in the Convention a provision in such terms as would enable them to declare, at the time of ratification,

that they do not intend to apply the provisions of the Convention in the United Kingdom or in any other of their territories in which there are no recruiting operations of the special kinds to which the Convention is intended to apply.

(5) In the reply to Question 39 reasons are given why it is not considered that a provision on the lines of Article 26 of the Convention concerning forced or compulsory labour would be appropriate in a Convention concerning recruiting, and for those reasons it would in any event be necessary to devise some new form of provision in relation to Article 421 of the Treaty of Versailles.

(6) The difficulties mentioned might be dealt with by the insertion in the Convention of a provision on the general lines of the draft Article suggested below.

(7) Even a provision on these lines would not wholly meet the difficulties with which the Government were confronted, since there still remains the question of territories where there exist the special kinds of recruiting to which the provisions of the Convention are intended to apply, as well as agencies of the kinds referred to above. These difficulties would however be considerably reduced by excepting from the definition of "recruiting" any operation leading to the engagement of personal or domestic servants or of non-manual workers.

(8) The proposed definition would also include operations undertaken in certain of the dependencies to obtain casual labourers who are required for a brief period, but who on completion of their work return to their homes. For example, the port of Tulagi is situated on a small island where there is little or no resident population of the casual labourer class, but where casual labour is required from time to time for such purposes as the unloading and loading of ships which arrive at infrequent intervals. This casual labour is brought, as and when required, from a neighbouring island. In the local social and geographical circumstances, it is not possible for these labourers to offer their services spontaneously either at the place of employment or at any other place of the kind referred to in the definition. Collection of these labourers, therefore, involves a "recruiting" operation as defined. It is, however, clearly not the intention that the stipulations of the proposed Convention should be applied to such operations. It is accordingly suggested that there should be excepted from the definition any operation leading to the engagement of labourers for work of a purely casual nature.

(9) The Government consider that these exceptions from the definition should be prescribed in the text of the Convention and not merely left open to the competent authorities as is proposed, in relation to other exceptions, in Questions 3 and 4.

### *Suggested Application Article*

(1) Any Member of the International Labour Organisation which ratifies this Convention shall append to its ratification a declaration stating whether its ratification refers both to its metropolitan territories and to the territories referred to in Article 421 of the Treaty of Versailles and in the corresponding Articles of the other Treaties of Peace, or only to all or any of the former or the latter territories.

(2) If, in respect of the territories referred to in Article 421 of the Treaty of Versailles and of the corresponding Articles of the other Treaties of Peace, any such Member desires to avail itself of the provi-

sions of sub-paragraphs (1) or (2) of paragraph 1 of the said Article, it shall append to its ratification a declaration stating :

- (a) The territories to which it undertakes to apply the provisions of the Convention without modification ;
- (b) The territories to which it undertakes to apply the provisions of the Convention subject to modifications, together with details of the said modifications ;
- (c) The territories to which the Convention is inapplicable and in such cases the grounds on which it is inapplicable ;
- (d) The territories in respect of which it reserves its decision.

(3) Any member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in accordance with paragraph (1) or clauses (b), (c) or (d) of paragraph (2) of this Article.

3. The Government consider that it is unnecessary that all recruiting operations which would be covered by the definition suggested in Question 2 should be subject to the stipulations of the proposed Convention, and they consider that it is undesirable for the relations between employer and employed to be disturbed by stipulations which are unnecessary. They accordingly agree that certain exceptions from the definition should be permitted. Generally speaking they consider that the permitted exceptions should be specified as precisely as possible in the Convention itself.

As regards the exceptions suggested in paragraph (i) of this Question :

(a) The Government agree that the Convention might suitably contain such an exemption : they suggest that the number should be specified and that it should be twenty (excluding personal and domestic servants).

(b) The Government agree that the Convention should contain a provision permitting the competent authorities to exempt from the stipulations of the Convention any recruiting operations undertaken by employers themselves or their messengers or agents within a specified radius from the place of employment, and they suggest that the radius to be specified in the Convention should be thirty miles.

4. The Government have no exceptions to suggest other than those suggested in Question 3 and in reply to Question 2.

## INDIA

2. This definition is extraordinarily wide and would cover operations which are entirely innocuous. The Government of India recognises that a narrow definition might be unsuitable, but think that the definition proposed must be tempered by some general power of exemption subject perhaps to a report to the International Labour Office. (See answer 4 below.)

3. (i) The reply is in the affirmative.

(ii) The limitations should be left to the national law and regulations.

4. Yes. Nothing short of a general power to exempt operations which are free from the evils with which the Convention is concerned will suffice.

### IRAQ

2. The reply is in the affirmative.
3. The Government does not consider that any exception is justified.
4. Definitely no.

### ITALY

2. "Recruiting" might be defined as follows: "Any operation undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services either at the place of employment or at a public emigration or employment office or at an office of an employers' organisation under the supervision of the competent authorities."

3. (i) The Government considers that it should be open to the competent authorities to prescribe the necessary exceptions to the definition.

The Government considers that of the two exceptions suggested, the one mentioned in clause (a) might be accepted, but not the one in clause (b). It would, in fact, be impossible strictly to define "a specified radius" to which the exception to the definition would apply. This depends on special conditions which change from one place to another, according to the opportunities for work to be found on the spot, and, therefore, according to the habits of the workers, habits which are dictated by necessity and which give rise to a normal phenomenon of spontaneous internal migration. These displacements cannot be reduced to figures and expressed in kilometres or as so many days' journey on foot.

In a general way, it might be said that where the movement of workers is confined to the ordinary radius within which they are in the habit of moving in search of work of their own free will, such movement should be regarded as being outside the definition given to recruiting.

Since these conditions necessarily vary from one place to another, it is only the local authorities who can judge in the matter.

4. It should be permissible for the competent authorities (i.e. the local authorities) to exclude from the proposed definition another case, that of the engagement of a limited number of workers, effected by worker-recruiters.

### NETHERLANDS

2. The Netherlands Government approves of the definition contemplated in Question 2.

3. (i) (a) So far as the Netherlands Indies are concerned, it does not seem to be necessary to make a distinction between recruiting for large and small undertakings, local labour not covered by the definition of recruits being, as a rule, obtained by the latter.

(b) Likewise, so far as the Netherlands Indies are concerned, the criterion of distance cannot be taken as a basis, as will be seen from



the reply to Question 4 ; it will, moreover, be observed from this reply that it is considered desirable that the recruitment of workers in the vicinity of an undertaking should be excluded otherwise from the definition of recruiting by the national laws and regulations.

4. It should be left to the national laws and regulations to stipulate that the definition will include only the recruitment of workers in certain specified areas for work to be carried out in other areas. The Government refers to Chapter 2 of the Grey Report in which, with regard to the Netherlands, the peculiar situation concerning recruitment in the Netherlands Indies has been explained ; for, given on the one hand the surplus population in Java and, on the other, the aptitude of the population for work in undertakings, this island along with the island of Madura, which is contiguous to it, constitutes the principal reservoir of labour for the plantations and undertakings of the Outer Provinces.

Consequently, it has hitherto seemed necessary to refer in the existing ordinances relating to recruitment only to the recruitment of workers in Java and Madura for employment in the Outer Provinces and abroad (if exemption is granted from the general rule prohibiting the recruitment of workers for undertakings outside the Netherlands Indies).

In the Outer Provinces it is only occasionally that there is any question of recruitment of workers for other regions, such as that referred to in the definition ; this is why the need for statutory regulation has not hitherto been felt.

As a general rule, it may be said that the people of the Outer Provinces work in undertakings only here and there in the immediate vicinity of their dwelling. As for the people of South-Western Celebes who swarm into other regions in order to work there, it can be said that this is a case of " spontaneous offer of their services ".

Either workers belonging to the immediate vicinity or itinerant workers, who offer themselves spontaneously, are most often employed in the undertakings in Java and Madura. In so far as operations which may be included in the definition of recruitment are effected in order to meet the demand for labour in less densely populated areas, there is no need to bring this recruiting under statutory provisions. In this respect Java and Madura might be considered as situated within a radius such as that referred to in Question 3 (i) (b), the limits of enforcement of which will not be limits of distance, expressed in figures, but the natural boundaries of these islands.

Emigration from West Java for the districts of Lampong, which takes place on a large scale especially at the time of the pepper harvest, and emigration on a smaller scale from East Java or Madura to the neighbouring island of Bali may be regarded as spontaneous emigration not covered by the definition.

In so far as it is really a question of recruitment of workers in Java and Madura for these neighbouring territories, there is no objection to the application of the provisions concerning recruitment.

It should be observed that the recruitment of workers in Java and Madura for free employment in the Outer Provinces (that is, under contracts without penal sanctions) is freely admitted to-day (see p. 94 of the Grey Report). It is, nevertheless, proposed to submit this recruitment of free workers to official supervision again and to this end a draft ordinance is being framed.

In brief, so far as the Netherlands Indies are concerned, the restriction relating to the exceptions to the definition refers only to the latitude which should be left to the national laws and regulations to determine to which islands of the Netherlands Indies Archipelago the international regulations should be applicable.

#### SPAIN

2. The reply is in the affirmative ; the Draft Convention should apply to any form of recruitment where there is no direct contact between the employer and worker at the place of employment.

3. The Draft Convention should provide that the definition given in the previous question does not apply to recruiting operations by employers who do not employ more than 50 workers or to recruiting operations undertaken within a radius of 80 kilometres of the place where the work is to be carried out.

4. If it is thought necessary to deal with other cases in addition to those indicated in the Questionnaire, the provision in the Draft Convention should be limited to giving a general power to exclude.

#### UNION OF SOUTH AFRICA

2. The reply is in the affirmative.

3. (i) (a) and (b) The replies are in the affirmative.

(ii) The reply is in the affirmative to (a).

(iii) The number to be determined and the area to be defined according to local considerations and requirements and the type of labour required.

4. Yes ; labour recruited for the Government.

#### YUGOSLAVIA

2. The Government considers that the systems of recruiting to be regulated could be defined by the proposed formula.

3 and 4. The reply to Question 3 (i) is in the affirmative ; the Government considers that the precise limitations concerning both the number of workers and the distance from the place of employment (Question 3 (ii)) should be left to be settled by national law and regulations.

### III. GENERAL REGULATION OF RECRUITING

5. Do you consider that it is desirable to provide that, when they examine the policy to be adopted for the economic development of an area and this policy is likely to involve the recruitment of labour, the competent authorities should take such steps as may be necessary and practicable :

(a) to avoid the risk of improper pressure being brought to bear on the peoples concerned by or on behalf of the employers in order to obtain the labour required ;

(b) to ensure that the political and social organisation of such peoples and their powers of adjustment will not be endangered by the demand for labour ;

(c) to deal with any other consequences of such development ?

6. Do you consider that the competent authorities should be required, before granting permission to recruit labour in any given area, to take into consideration the possible effects of the withdrawal of adult males on the social life of the inhabitants, and in particular should consider :

(a) the density of the population and its tendency to increase or decrease, and the probable effect upon the birth-rate of the withdrawal of adult males ;

(b) the possible effects on the welfare and development of the community concerned, notably in connection with the food supply ;

(c) the dangers to the family and morality arising from such withdrawal ;

(d) the effects on the social organisation of the community concerned ?

7. Should any other factors be taken into account by the competent authorities before granting permission to recruit labour in any given area ?

8. Do you consider it desirable to provide that the competent authorities should, where necessary, fix the maximum number of adult males who may be recruited in any given social unit so that the number of adult males remaining does not fall below a prescribed percentage of the normal proportion of adult males to women and children ?

9. Do you consider it desirable to provide that, if the circumstances make the adoption of such a policy feasible and desirable, the competent authorities should encourage the workers to be accompanied by their families, particularly in the case of workers recruited for agriculture or similar employment at a long distance from their homes and for periods exceeding a specified duration ?

10. Do you consider that the separation of recruited workers from their wives and minor children, when these members of their families have accompanied the workers to the place of employment, should be prohibited ?

11. Do you consider that, in all appropriate cases, recruited workers should be grouped at the place of employment under suitable ethnic conditions ?

BELGIUM

5. (a) and (b) The replies are in the affirmative.  
(c) The reply is in the negative.
6. (a), (b), (c) and (d) The reply is in the affirmative.
7. The reply is in the negative.
8. The reply is in the affirmative.
9. The reply is in the affirmative.
10. The reply is in the affirmative.
11. The reply is in the affirmative.

BULGARIA

5. (a), (b) and (c) The reply is in the affirmative.
6. (a), (b), (c) and (d) The reply is in the affirmative.
7. The reply is in the affirmative.
8. The reply is in the affirmative.
9. The reply is in the affirmative.
10. The reply is in the affirmative.
11. The reply is in the affirmative.

CHILE

5. (a) and (b) The reply is in the affirmative.  
(c) Any measures deemed necessary or practicable to avoid other undesirable consequences.
6. (a), (b), (c) and (d) The reply is in the affirmative.
7. Yes. They should take into account the physical and occupational aptitude of the worker to be employed for the place of employment and the occupation or activity for which he is engaged, as well as measures ensuring immunity from certain diseases, and guarantees as to the fulfilment by the employer of the obligations imposed upon him by the contract.
8. The reply is in the affirmative.
9. The reply is in the affirmative.
10. This separation should be forbidden except where justified by serious reasons. It should in any case be stipulated at the moment when the recruiting takes place.
11. The reply is in the affirmative.

CHINA

5. Such a provision would be necessary.
6. The competent authorities should be so required.
7. The Government considers that no other factors need be taken into account.
8. The reply is in the affirmative.
9. Such a provision would be desirable.
10. It should be prohibited.
11. The reply is in the affirmative.

FRANCE

5. The reply is in the affirmative.
6. The reply is in the affirmative.
7. Other factors than those referred to in Question 6 do not seem to need to be taken into account by the competent authorities before granting permission to recruit labour in any given area.
8. This provision should be included only if the fixing of the proportion of the males who may be recruited is left to the discretion of the local authorities.
9. The precise definition of the word "family" should be left to the local authorities; the extent of the "family" varies too much from one territory to another—particularly in polygamous countries—for a uniform rule to be adopted in this matter. Likewise, it is important that very wide latitude should be allowed in this instance also to local administrations so that the strict application of a stipulation of this kind may not have any unfavourable demographic, domestic or social consequences which the provisions envisaged in Question 6 were meant to obviate.
10. The reply is in the affirmative.
11. The same observations as on Question 9.

GREAT BRITAIN

5. The Government agree with the principles underlying this Question. On the other hand, they do not consider that it would be possible to formulate any provisions, based on these principles, in sufficiently precise terms to be suitable for inclusion in a Convention. These principles might, however, appropriately form the subject of a Recommendation.
6. The Government agree that regard should be had to considerations referred to in this Question when applications for permission to recruit in any given area are under consideration. As in the case of Question 5, however, they do not consider that it would be possible

to formulate any provisions, based on these considerations, in sufficiently precise terms to be suitable for inclusion in a Convention. These considerations might, however, appropriately form the subject of a Recommendation.

7. It is suggested that the Recommendation suggested in the reply to Question 6 might also include the consideration of the possible effects on the welfare of the inhabitants in the area in which the recruited workers are to be employed (e.g. recruiting has been prohibited or restricted in certain districts of the Tanganyika Territory in order, *inter alia*, to prevent the spread of sleeping sickness).

8. The Government agree that it is desirable that, *where necessary*, the competent authorities should fix such a maximum. So far as the British Colonies are concerned, however, there has not hitherto been any necessity to take any such action, and the Government are not prepared to accept a general obligation to impose such a limit.

In these circumstances, and in view of the objections to including in an International Convention an obligation of such a contingent character as is indicated in the text of the Question, it is suggested that the Question should form the basis for a Recommendation.

9. The Government are in sympathy with the policy underlying this Question, which they consider should be applied when circumstances permit. For a variety of reasons, however, some of which relate to the circumstances at various centres of employment, while others relate to circumstances in areas where labour is recruited, it is often not practicable or even desirable to attempt to give effect to this policy. The Government could not therefore accept an obligation to apply this policy unless the provisions in the Convention were qualified by some such phrase as that which appears in the second line of the Question. It is, however, not considered that a provision, so qualified, would serve any useful purpose in a Convention, and it is therefore suggested that it should form the subject of a Recommendation.

10. The Government are in entire sympathy with the principle underlying this Question. At the same time, as indicated in the reply to Question 9, it is not always practicable or desirable to encourage recruited workers to take their families with them to the place of employment. It is therefore necessary to have regard to the possibility of a recruited worker taking his family, without being authorised to do so, to a place where it is not possible to provide suitable accommodation for families. The Government would accordingly only be able to agree to the inclusion in the Convention of a provision on the lines suggested, if it were qualified by the words "when the family has been authorised to accompany the worker to the place of work". In this connection attention is invited to the text of Questions 30 and 38.

11. The reply is in the affirmative.

#### INDIA

5. This question is in the main inapplicable to India and the Government of India have nothing to add to the observations contained in reply to Question 1.

6, 7 and 8. See the reply to Question 5.

9, 10 and 11. See the reply to Question 5.

#### IRAQ

5. (a), (b) and (c) The reply is in the affirmative.

6. The answers on all points are in the affirmative and attention is invited in this connection to items 9, 10 and 11.

7. Health considerations.

8. Optional to the Government concerned.

9. The Government thinks it most desirable that provision be made for workers to be accompanied by their families.

10. The reply is in the affirmative.

11. Yes, in all possible cases.

#### ITALY

5. The Government approves of the proposals referred to in this question, which it considers necessary and expedient.

6. The same reply as to Question 5.

7. The Government considers that the competent authorities should not take into account any other factors than those mentioned in Question 6.

8. The Government considers that this principle might be accepted, the practical application thereof being left to the discretion of the competent authorities.

9. A favourable reply to this question seems to be called for.

10. In principle, yes. However, it should be permissible for the competent authorities to decide, under certain specified circumstances, that there should be no cohabitation of a worker and his family at the place of work and to order the worker's family to return home.

11. The grouping of workers according to their ethnic affinities seems desirable in order to facilitate mutual aid among them.

#### NETHERLANDS

5. The reply is in the affirmative. Labour for areas under development has not been hitherto recruited on the spot, but — unless Chinese workers are engaged — principally in Java, in accordance with the existing regulations relating to recruitment. It is for this reason that the need for protective clauses such as those referred to here has not yet been felt in the Netherlands Indies. Moreover, with the existing supervision of the Labour Inspectorate the necessary measures could be taken immediately if it should appear that any pressure had been exercised at the time of recruitment.

6. Yes.

(a) Java being over-populated, the need for taking into consideration the matter mentioned here has not been felt in the case of the Netherlands Indies.

(b) Persons who accept engagements are as a rule those who do not find sufficient scope for making a living owing to the over-population of Java.

(c) Moreover, more and more, recruitment of families is being effected.

(d) See the replies to (a) and (b).

7. In accordance with the existing regulations on recruitment, the hiring, under penal sanctions, of workers recruited in Java and Madura is prohibited in the case of persons under age, and in the case of women, if they are married, only with the consent of their husbands and on condition that, if the parties desire it, their cohabitation is guaranteed. Such provisions are considered desirable.

8. The reply is in the affirmative. The necessity for such provisions has not been felt so far in the Netherlands Indies (see the reply to Question 6).

9. The reply is in the affirmative. As has been stated in the reply to Question 6 (c), more and more, recruitment of families is being effected, and this form of recruitment is recommended by the Government of the Netherlands Indies. In addition, unmarried persons are recruited.

Natives recruited in Java are not wont to leave their families behind them, as do the Chinese who migrate to the Netherlands Indies.

10. The reply is in the affirmative. The Coolie Ordinance also includes this provision by stating that it is not permitted to separate the worker from his family against his wish.

11. In practice, the undertakings in the Netherlands Indies take account of this where necessary.

## SPAIN

5. For the reasons indicated in the question, the competent authorities should take the steps mentioned in order to ensure that the desired end is secured and to avoid economic consequences that would be detrimental to the communities concerned.

6. Before authorising recruitment the competent authorities should take into consideration the effects that recruiting may have in order to avoid injury to the social and economic interests of the communities concerned.

7. The general principle indicated in the reply to the previous question being admitted, it follows that the competent authority should have regard not only to the factors explicitly mentioned in the question but also to any other factor that might require the taking of measures to avoid social injury.

8. The Draft Convention should make provision for the number of persons recruited to be restricted in certain cases.



9. Yes, when the employment is for agriculture or similar work at a distance of more than 50 kilometres from the worker's home and for a period of more than two years.

10. Yes ; this is necessary to permit of the worker living a normal life.

11. In every case where it is possible to do so, workers should be grouped in accordance with their ethnic affinities.

#### UNION OF SOUTH AFRICA

5. (a), (b) and (c) The replies are in the affirmative.

6. (a). (b). (c) and (d) The replies are in the affirmative.

7. Local requirements should be considered before permission to recruit for outside interests is permitted.

8. No ; the need for action of this kind has not yet presented itself in the Union.

9. No. Family migration would tend towards detribalisation. Further temporary movements of this nature are not in accord with Native habit.

10. The reply is in the negative.

11. Yes, as far as practicable.

#### YUGOSLAVIA

5. The reply is in the affirmative.

6. The reply is in the affirmative.

7. (No reply is given.)

8. The reply is in the affirmative.

9. The Government considers that in principle the workers should go unaccompanied.

10. The reply is in the affirmative.

11. The reply is in the affirmative.

#### IV. AGENCIES FOR RECRUITING

##### *Recruiting by Public Officers*

12. Do you consider that public officers should be prohibited from recruiting, either directly or indirectly, for private undertakings, except when the workers are to be employed on the execution of works of public utility ?

*Recruiting by Chiefs*

13. Do you consider that chiefs or other indigenous authorities should be prohibited from :

- (a) acting as recruiting agents ;
- (b) exercising pressure upon possible recruits ;
- (c) receiving any special remuneration for assistance in recruiting ?

*Professional Recruiting*

14. Do you consider that professional recruiting should be prohibited, except under licence issued by the competent authorities and when the recruiter is acting on behalf either of an administration or of one or more specific employers or organisations of employers ?

*Recruiting by Employers*

15. Do you consider that, except in the special case referred to in Question 17, recruiting by employers or their agents, by organisations of employers or by organisations subsidised by employers, or by the agents of such organisations, should be permitted only under licence issued by the competent authorities ?

*Recruiters' Assistants*

16. (i) Do you consider that persons employed by a licensed recruiter in a subordinate capacity to assist in the actual recruiting operations should be required to be approved by a public officer and to be furnished with a permit by the licensee ?

(ii) Are you also of opinion that such recruiters' assistants should be required to wear a distinguishing badge or uniform ?

*Recruiting by Workers*

17. (i) Do you consider that the recruiting of workers by worker-recruiters should be permitted only in accordance with the following conditions :

(a) that the worker-recruiters are manual workers employed by the same undertaking for which they are commissioned to recruit other workers ;

(b) that they are in possession of a permit issued by the employer and countersigned by a public officer ;

(c) that the remuneration they receive is not such in nature or amount as to constitute an inducement to deceive prospective workers regarding the conditions of employment ;

(d) that they are permitted to recruit only in the neighbourhood of their homes ;

(e) that their operations are supervised in such manner as may be prescribed by the competent authority ?

(ii) Do you consider that any other conditions should be attached to the recruiting of workers by manual workers ?

#### BELGIUM

12. The reply is in the affirmative.

13. (a), (b) and (c) The replies are in the affirmative.

14. The reply is in the affirmative.

15. The reply is in the affirmative.

16. (i) The reply is in the affirmative.

(ii) It is thought preferable not to allow recruiters' assistants to wear a distinguishing badge or uniform in view of the risk of improper exercise of moral pressure.

17. (i) The reply is in the affirmative.

(ii) The reply is in the negative.

#### BULGARIA

12. The reply is in the affirmative.

13. (a), (b) and (c) The reply is in the affirmative.

14. The reply is in the affirmative.

15. The reply is in the affirmative.

16. (i) and (ii) The reply is in the affirmative.

17. (i) (a), (b), (c), (d) and (e) The reply is in the affirmative.

(ii) The reply is in the affirmative.

#### CHILE

12. Yes, unless such recruiting falls within their duties as officials of public employment services.

13. (a), (b) and (c) The reply is in the affirmative.

14. The reply is in the affirmative.

15. The reply is in the affirmative.

16. (i) and (ii) The reply is in the affirmative.

17. (i) (a), (b), (c), (d) and (e) The reply is in the affirmative.

(ii) The reply is in the negative.

CHINA

12. The reply is in the affirmative.
13. (a), (b), (c) The replies are in the affirmative.
14. The reply is in the affirmative.
15. The reply is in the affirmative.
16. (i) and (ii) The replies are in the affirmative.
17. (i) The reply is in the affirmative.  
(ii) The Government does not suggest any other conditions.

FRANCE

12. The reply is in the affirmative.
13. The reply is in the affirmative.
14. The reply is in the affirmative.
15. The reply is in the affirmative.
16. (i) The reply is in the affirmative.  
(ii) Besides the fact that their utility does not seem to be evident, badges or uniforms might, in the eyes of the Natives, invest recruiters and their assistants with official authority and thereby give rise to abuses.
17. The reply is in the affirmative.

GREAT BRITAIN

12. Yes ; in fact, so far as the dependencies for which His Majesty's Government in the United Kingdom are responsible are concerned, public officers are not permitted to engage in recruiting for private employers even for the execution of works of public utility.

13. The Government agree that Chiefs or other indigenous authorities should be prohibited from acting as recruiting agents and from exercising pressure upon possible recruits. As regards paragraph (c) of the Question, it may be mentioned that, in the dependencies for which His Majesty's Government in the United Kingdom are responsible, Chiefs or other indigenous authorities do not receive any payments such as those referred to on page 18 of the Red Report.

14. The reply is in the affirmative.
  15. The reply is in the affirmative.
  16. (i) The reply is in the affirmative.  
(ii) In a number of British territories in Southern Africa the wearing of uniforms or distinctive badges is customary and in some of them it is prescribed by law. In these territories the practice is not found to lead to any abuses.
- In other British dependencies in East and Central Africa, on the other hand, distinctive badges and uniforms, especially armlets, have

come to be regarded as emblems of authority either of the central or the local native Government, and give the wearers a certain prestige which it would be undesirable to confer on recruiters' assistants. In these territories it is considered that the wearing of uniforms or badges would inevitably lead to such persons exercising dangerous authority over others.

In these circumstances the Government would be unable to agree to the insertion in the Convention of a provision either prohibiting the wearing of uniforms or distinctive badges by recruiters' assistants, or requiring them to be worn. They would, however, see no objection to a provision stipulating that, where they are worn, their form should be subject to the approval of the competent authority.

17. (i) The Government agree that in cases where workers are formally commissioned by their employers to procure the services of other workers, in circumstances which give to their operations the definite character of "recruiting", their operations should be regulated on the lines suggested in this Question. At the same time, the Government wish to place on record that in various of the British dependencies in Africa employers have established what amounts to a personal connection with sources of labour supply through their well-satisfied employees, who, time after time, return to the same employer after a spell of leave at home, taking with them a number of their friends who require work. This system is most popular both with employers and employees, and, in the opinion of the Government, it is unnecessary and undesirable to impose any restrictions upon it in those territories in which it is customary.

At the same time, it will be realised that the existence of this system concurrently with the practice of definitely commissioning employees to obtain recruits will render it very difficult, in some cases, to determine whether a worker is illegally engaged in an actual recruiting operation, or whether he is merely recommending to his friends employment with which he is well satisfied. It will therefore be necessary for the administrative officers in the areas concerned to be allowed a very wide discretion as regards the enforcement of the regulations.

It is to be understood that, for the above reasons, the following replies to the various points raised in this Question relate only to operations which can definitely be classed as "recruiting":

(a) Yes, subject to the deletion of the word "manual". (There does not seem to be any reason why an employer should be debarred from utilising in this manner the services of, e.g., a native clerk or foreman.)

(b) Yes, except that the word "permit" should be replaced by "letter of authority, or other equivalent document".

(c) Yes. As regards the nature of such remuneration, however, the Government see no reason to stipulate that it should not take the form of a capitation fee (paid either alone or in addition to the worker's normal remuneration), provided that the amount of any such fee is strictly limited. (This form of remuneration is customary in certain British dependencies and has not been found to lead to abuse.)

(d) Yes, but a certain amount of elasticity should be permitted, e.g. in certain territories it would be sufficient to stipulate that the worker-recruiter should operate only in the area inhabited by his own tribe.

(e) The reply is in the affirmative.

(ii) The Government are of the opinion that the conditions mentioned in paragraph (i) provide an adequate measure of control over this form of recruiting.

#### INDIA

12. The reply is in the affirmative.

13. This is not applicable to India.

14. See the reply to Question 1. The suggestions embodied in Questions 14-31 go beyond anything that is required in India even in respect of those forms of recruitment where control is still required and their general application would involve unwarrantable interference with methods of recruitment.

15, 16 and 17. See the reply to Question 14.

#### IRAQ

12. It is assumed the object of this question is to ascertain whether Government supports the view that provision should be made for public services to be exercised in favour of private undertakings, in which case the Government considers that such practice should be prohibited.

13. (a) The reply is in the negative.

(b) The reply is in the affirmative.

(c) The Government considers that in such cases they should receive the normal remuneration and not any special return for their services.

14. The Government considers that recruiting should only be permitted under licence issued by the competent authority.

15. See the reply to Question 14.

16. The reply is in the affirmative.

17. The answer to all points included in this question is in the affirmative.

#### ITALY

12. Public officers should be prohibited from recruiting, either directly or indirectly, for private undertakings, except when the workers are to be employed on the execution of works of public utility. But neither the powers of public employment offices nor the right and duty of public officers to foster the habit of work among indigenous peoples should in any case be diminished.

13. Chiefs and other indigenous authorities should not act in any of the ways mentioned in (a), (b) and (c) of this question. These authorities should not, however, be deprived of their functions as

intermediaries between the Government and their peoples in fostering the habit of work among them.

14. As for the other forms of recruiting referred to in Questions 14 (professional recruiting), 15 (recruiting by employers), 16 (recruiters' assistants) and 17 (recruiting by workers), the Government considers that the rules proposed in respect of these special systems might be prescribed in the international regulations ; there are no such systems in the Italian colonies.

15, 16 and 17. See the reply to Question 14.

#### NETHERLANDS

12. Yes; according to the provisions relating to recruitment now in force recruitment through the medium of public officers is allowed, but in practice, for several years past, this form of recruitment is no longer employed. Moreover, it was used only in respect of public works by permission of, and subject to the conditions stipulated by, the Governor-General in each case.

13. (a) The reply is in the affirmative ; this does not happen in the Netherlands Indies.

(b) Yes, the only case in which an indigenous authority was concerned with the forwarding of labour was when, on behalf of the employment office of Jokjakarta, it notified in the *desas* that there was demand for labour in the Outer Provinces and gave information on the subject. It was, however, clearly stated that pressure should not be brought on the people of the *desas* to emigrate and that only placing, of no financial profit to anyone, was concerned (see p. 140 of the Grey Report).

(c) Yes. If a recruiting organisation such as the V.E.D.A. (see p. 94 of the Grey Report) requires that any applicant should be provided with a certificate issued by the chief of the *desa* (*desahoofd*) stating that there is no objection to his emigration — for family reasons, debts, or similar other considerations — the chief of the *desa* gets a small payment for this certificate (*loeloesbrief*).

The abolition of this source of revenue arising indirectly from recruiting is contemplated.

14. Yes, this form of professional recruitment no longer exists in the Netherlands Indies since 1930. There are no exceptions, but, as has already been stated in the reply to Question 4, "recruitment" at present includes only the recruitment of labour in Java and Madura for employment under penal sanctions. As the recruitment of free workers (that is, workers not signing contracts with penal sanctions) is free to-day, it may very well happen that this category of workers is recruited for undertakings in the Outer Provinces by persons deriving financial profit therefrom.

This will, however, become impossible under the change proposed in the regulations relating to recruitment.

The Government is affiliated to the *Eigen-werving* recruiting organisations in respect of its own undertakings.

As explained at pp. 96 and 97 of the Grey Report, Chinese labour is recruited abroad by professional recruiters for some undertakings and for the *panglongs*.

15. The reply is in the affirmative. In the Netherlands Indies the *Eigen-werving* is regulated in this manner in respect of workers engaged under penal sanction contracts (see the reply to Question 14).

16. (i) In Java and Madura, as will be seen from the reply to Question 15, the recruitment of workers by employers or an organisation of employers for employment, under penal sanctions, in their undertakings in the Outer Provinces is subject to a licence from public authorities (under special conditions). In accordance with the legal provisions, the appointment of agents (*gemachtigden*) who may act for the manager of such a recruiting organisation is subject to the approval of the authorities.

In a *desa* the real recruiting is done by persons belonging to these organisations (the *Eigen-werving* licences are limited to only two of these organisations) who do not require a licence from the public authorities.

Although the desirability of a licence being given to the whole staff of a recruiting organisation is well recognised in theory, its practicability has always been questioned because the system long applied in Java involves the employment of a whole army of assistants for recruitment.

The attention of the committee set up to supervise recruiting (see p. 93 of the Grey Report) was called to this point ; and at the time of the revision of the rules relating to recruitment this point will also have to be considered again. The real control of the authorities over recruitment begins to-day only after the prospective contract workers have been transferred to the place of embarkation. There, the supervisory officer enquires of them whether they agree, in its broad outline, to the contract that they are about to conclude. In the event of the reply being negative, they are repatriated to their place of origin at the cost of the recruiting organisation. At the time of the presentation of the provisions of the contract of engagement, the workers get another opportunity, before the conclusion of the contract, to refuse to engage themselves. This procedure is regarded as providing sufficient safeguards against possible deceit on the part of the recruiters in the interior. If a case of this kind occurs, the recruiting organisation is invited to dispense with the services of such a recruiter (*werfmandoer*).

(ii) The wearing of a badge or uniform by the recruiters is not considered desirable ; it is rather to be feared that they might use them for imposing themselves on the population. .

17. (i) As has already been several times pointed out, the existing regulations in the Netherlands Indies make a distinction between the recruitment of workers under penal sanctions and the recruitment of free workers. This holds good also in the case of the recruitment effected by worker-recruiters belonging to various undertakings. For the moment, this recruitment is free so far as free workers are concerned. The manner in which the recruitment of these workers by *laukehs* will be regulated in the new draft ordinance relating to recruitment is not yet decided. The placing of this form of recruitment



also under the supervision of public authorities is under consideration. The recruitment of workers under penal sanctions by *laukehs* without supervision by the public authorities is out of the question; the *laukehs* may bring the persons whom they have recruited to the offices of the *Eigen-werving* organisations and the prospective contract workers are then submitted to the same supervision by public authorities as referred to in the reply to Question 16 (i) as regards the declaration of consent to the contract of engagement and the conclusion of that contract before an official. Moreover, a recruiting organisation furnishing sufficient guarantees for proper recruiting can obtain, under stated conditions, a licence for concluding contracts of engagement under penal sanctions in the Outer Provinces — which is prohibited in respect of Natives recruited in Java or Madura (see p. 94 of the Grey Report). Such a licence has been granted to only one recruiting organisation, the V.E.D.A., which is engaged in forwarding recruits brought in by the *laukehs*.

(a) This is the case for recruiting by *laukehs* (*laukeh-werving*) in the Netherlands Indies.

(b) In the case of recruitment by *laukehs*, organised as indicated at the end of the preceding paragraph (the V.E.D.A.), the *laukeh* is, in fact, provided with a permit from an employer, but the supervision of the public authorities does not commence until the presentation of the contract of engagement before leaving Java; the countersigning of the licence by an official is not considered necessary.

(c) The *laukehs* belonging to the organisation mentioned above get no kind of money payment; any other system, as well as the granting of other advantages to the *laukehs* (such as the promise of another job in the event of their recruiting a certain number of new workers), is not considered desirable.

(d) Yes.

(e) This is the rule, in so far as the recruitment of workers under penal sanctions is concerned; as for the recruitment of free workers, supervision is contemplated, but this point has not yet been submitted to the decision of the Legislature.

(ii) The exemption made in the case of the recruiting organisations mentioned in the reply to Question 17 (i) in respect of the conclusion in the Outer Provinces of penal sanction contracts with workers recruited in Java by the *laukehs* is also subject to other conditions, such as compulsory medical examination of the worker leaving Java, prescribed limits in respect of the duration of the contract, fixation of a period (ten days) after arrival at the undertaking, during which it is not permissible to conclude the contract (by this measure the recruits are enabled to familiarise themselves at the outset with the work to be done and the conditions of life). As the Government intends to abolish work under penal sanctions entirely in the near future, there will no longer be any question of such licences.

As has already been stated above, it is proposed shortly to subject the recruitment of free workers to regulation once again and consequently also recruitment through the medium of workers acting for undertakings.

See also the reply to Question 31.

### SPAIN

12. As a general rule, this form of recruiting should be prohibited ; it should be authorised only if the work on which the workers are to be employed is incontestably of a public character.

13. Chiefs and other indigenous authorities should be prohibited from acting in the way indicated.

14. Professional recruiting should be prohibited except in cases where it is effected on behalf of public authorities or duly approved and authorised organisations of employers.

15. As indicated in the reply to the previous question, the licence referred to should be required.

16. (i) The settlement of such questions as the obligation to obtain a permit and to secure the approval of the administration for recruiters' assistants should be left to the discretion of the colonial authorities.

(ii) It is not considered that such a condition in regard to uniforms should be imposed.

17. (i) The reply is in the affirmative.

(ii) It is considered that it would be desirable to indicate as further conditions, that the area in which these recruiters should operate should increase in inverse ratio to the density of the population in the area, and that their operations should be carried on among members of the tribe to which they themselves belong.

### UNION OF SOUTH AFRICA

12. The reply is in the affirmative.

13. (a), (b) and (c) The replies are in the affirmative.

14. The reply is in the affirmative.

15. The reply is in the affirmative.

16. (i) The reply is in the affirmative.

(ii) No : a badge symbolises authority and is often abused.

17. (i) (a), (b), (c), (d) and (e) The recruiting of workers by worker-recruiters is not favoured, as it would probably lead to abuse.

(ii) This question falls.

### YUGOSLAVIA

12 to 17. Questions 12 to 20 do not give rise to any objections. In principle the Government considers that regulations concerning recruiting should provide full protection for the workers. This applies also to recruiting agencies. Moreover the conditions prescribed by law and regulations for the issue of recruiting licences should include the most far-reaching safeguards possible.

## V. RECRUITING LICENCES

### *Licensing Conditions*

18. (i) Do you consider that the conditions for the issue of recruiting licences to be prescribed by law or regulations should include the following requirements :

(a) that the licensee, if an individual, is a fit and proper person ;

(b) that every licensee should deposit with the competent authorities financial or other security for his proper conduct as a licensee ;

In replying to this sub-paragraph, please give your opinion separately regarding the desirability of imposing this condition in respect of each system of recruiting.

(c) that every licensee should keep records of all recruiting operations in such form as the competent authorities may prescribe, and that these records should be such that the regularity of every operation of recruiting can be ascertained and every recruited worker identified ;

(d) that the licensee, if he is the agent of another licensee, should receive a fixed salary in preference to remuneration, calculated at a rate per head of workers recruited ;

(e) that adequate provision has been made for safeguarding the health and welfare of the recruited workers from the time of recruiting ?

(ii) Are you of opinion that any other conditions should be attached to the issue of recruiting licences ?

### *Validity of Licences*

19. Do you consider that licences should be granted only for a fixed period to be prescribed by law or regulations ?

### *Renewal and Withdrawal of Licences*

20. Do you consider that the renewal of licences should be conditional upon the manner in which the holders have respected the conditions under which the licences were originally granted, that licences should be withdrawable where the licensee has been found guilty of any offence or misconduct unfitting him to conduct recruiting operations, and that the competent authorities should have the power to suspend any licence pending the result of any enquiry into the conduct of the licensee ?

BELGIUM

18. (i) The replies are in the affirmative.

With regard to point (b), the Government considers that financial or other security should also be furnished in the case of recruiting by manual workers as well as in the other cases of recruiting.

(ii) The reply is in the negative.

19. The reply is in the affirmative.

20. The reply is in the affirmative.

BULGARIA

18. (i) (a), (b), (c), (d) and (e) The reply is in the affirmative.

(ii) The reply is in the affirmative.

19. Yes, provided that the fixed period be determined only by national law or regulations.

20. The reply is in the affirmative.

CHILE

18. (i) (a), (b), (c), (d) and (e) The reply is in the affirmative.

(ii) The reply is in the negative.

19. The reply is in the affirmative.

20. The reply is in the affirmative.

CHINA

18. (i) The reply is in the affirmative.

(ii) (No reply is given.)

19. The reply is in the affirmative.

20. The reply is in the affirmative.

FRANCE

18. The reply is in the affirmative.

19. The local authorities should settle this matter.

20. The reply is in the affirmative.

GREAT BRITAIN

18. (i) (a) The reply is in the affirmative.

(b) It is considered that financial or other security for the proper conduct of the licensee should be required when the licensee is :

- (i) A professional recruiter ;
- (ii) An agent of an Employers' Organisation ; or
- (iii) An agent of an employer other than a person (e.g. a manager) employed in his own business.

It is not considered that the Convention should require that an employer recruiting for his own employment should be required to give security.

This question does not arise in the case of worker-recruiters, since it is not suggested that they should be licensed.

(c) The reply is in the affirmative.

(d) It is not considered that it would be practicable to stipulate that a licensee, acting as the agent of another licensee, should in all circumstances receive a fixed salary, since the number of workers whom he would be required to engage would not always be known in advance, and might vary from time to time. It therefore seems necessary to leave the agent's remuneration to be determined in accordance with the amount of service which he may be required to render. In most cases the most convenient criterion would be the number of workers recruited. It is, however, suggested that where either the whole or part of the agent's remuneration takes the form of a fee per caput, such fees should be subject to a prescribed maximum.

(e) Yes, except that it is not considered that the responsibility of the licensee should begin until the recruited worker starts his journey to the place of employment.

(ii) It is considered that the conditions set out under paragraph (i) of this Question afford adequate safeguards.

19. Yes. (It is suggested that the maximum period to be prescribed should be twelve months.)

20. The reply is in the affirmative.

## INDIA

18, 19 and 20. See the reply to Question 14.

## IRAQ

18. (i) (a) The reply is in the affirmative.

(b) Yes ; the Government also considers that security should be required in respect of each system of recruiting.

(c) The reply is in the affirmative.

(d) Most certainly.

(e) The reply is in the affirmative.

(ii) Other conditions should be optional to the authority concerned.

19. The reply is in the affirmative.

20. The Government agrees that all the conditions stipulated are necessary.

## ITALY

18, 19 and 20. The Government has no observations to make on the conditions for the issue of recruiting licences and the provisions relating to the validity, renewal, withdrawal and suspension of licences. It approves of these proposals, although the question of licences does not concern the Italian colonies.

## NETHERLANDS

18. (i) (a) Yes, the present situation is such that the recruitment licences known as *eigenwervingsvergunningen* are not issued to individuals. The proposed condition is applied in the approval by public authorities of the appointment of an agent of an employers' organisation to which an *Eigen-werving* licence has been issued.

(b) Until the abolition of professional recruitment a deposit in respect of the recruiting licences issued to professional recruiters was required ; no deposit is required in respect of other forms of recruitment (recruitment of workers under penal sanctions) in force to-day—*Eigen-werving*, which is recruitment by employers, and organised *laukeh* recruitment.

(c) Yes; the matter has been dealt with in this way in the Netherlands Indies.

(d) The payment of a fixed salary to the recruiting staff instead of *koppengeld* (payment in proportion to the number of workers recruited) has always been urged. As regards the subordinate recruiting staff, however, it has not yet been possible to have this rule enforced entirely ; therefore, the system still obtains of paying a certain sum for each recruited worker, from which, however, various charges have to be deducted.

(e) Yes ; to this end the recruitment depôts are subject to the supervision of public authorities.

(ii) The issuing of the *Eigen-werving* recruiting licences is, in fact, further subject to other guarantees ; for instance, it is open to the authorities concerned to ask for the return of a recruited worker to Java. The Government is inclined to think that the question of stipulating additional conditions might be left to be settled by the authorities concerned.

19. The *Eigen-werving* licences are issued for a definite period or until cancellation. The approval of the appointment of an authorised employer's agent may be withdrawn at any time. The Government considers that such a provision should be ample for the end in view.

20. This is the purpose of the regulations mentioned in the reply to Question 19. The need for suspending an *Eigen-werving* licence has never been felt, and, since the entire *Eigen-werving* is in the hands of two organisations only, such a measure does not seem to be desirable in practice. In the event of one of these two employers' recruiting organisations being dissolved for any reason, measures for preventing the stagnation of recruitment would have to be taken without delay, either by replacing this organisation by another or by developing the surviving organisation.

18. The issue of recruiting licences should be subject to the conditions mentioned, in particular the condition that financial security should be deposited, except in the case of direct recruiting by officers of the administration, and the condition that the licensee, if he is the agent of another licensee, should receive a fixed salary.

The holder of a licence should be held responsible for the due discharge of the obligations of his agent.

19. The period of validity of licences should be short, but on the other hand provision should be made to allow the period to be extended so as to facilitate the selection of recruiters from among those whose work gives the most satisfactory results.

20. The renewal of a licence should evidently be conditional upon the manner in which it has been used. The authorities should have power to withdraw a licence in the event of any failure to observe the conditions under which it was granted or of abuse in the use of the licence.

#### UNION OF SOUTH AFRICA

18. (i) (a) and (b) The replies are in the affirmative. It is desirable that an indemnity be given to meet any fines and forfeitures in the case of a *recruiter agent* and in the case of an *employer recruiter* to meet any wages due as well as fines and forfeitures.

(c), (d) and (e) The replies are in the affirmative.

(ii) Yes, as follows : If any worker has been irregularly recruited any cost incurred for his repatriation shall be borne by the recruiter.

19. The reply is in the affirmative.

20. The reply is in the affirmative.

#### YUGOSLAVIA

18, 19 and 20. See the reply to Question 12.

### VI. PROTECTION OF RECRUITED WORKERS

#### *Administrative Supervision*

21. (i) Do you consider that recruited workers should be required to be brought before a public officer for the verification of the observance of the law and regulations ?

(ii) Are you further of opinion that recruited workers should be required to be brought before this public officer as near as possible to the place of recruiting ?

Please answer this question separately for each system of recruiting.

*Memorandum of Information*

22. (i) Do you consider that recruited workers who are not engaged at or near to the place of recruiting should be furnished with a document in writing (e.g. memorandum of information, work book, provisional contract) and that this document should contain :

(a) particulars of the identity of the worker ;

(b) appropriate particulars of the prospective conditions of employment ;

(c) particulars of any advances of wages made to the worker ?

(ii) Are you of opinion that it should be provided that this document should contain any other information ?

*Medical Examination*

23. Do you consider that :

(a) each recruited worker should be medically examined as near as possible to the place of recruiting ;

(b) that a second medical examination should take place on arrival at or conveniently near the place of employment and that the final decision concerning the physical aptitude of the worker for employment should depend upon this examination ;

(c) that measures should be taken for the acclimatisation and adaptation of recruited workers ?

*Advances*

24. Do you consider that the amount of the advances of wages that may be made to a recruited worker should be limited and regulated by the law and regulations, and that whenever possible advances of wages should be made in the presence of the public officer before whom recruited workers are brought for the verification of the observance of the law and regulations ?

BELGIUM

21. (i) and (ii) The replies are in the affirmative whatever may be the system of recruiting.

22. (i) (a), (b), (c) The replies are in the affirmative.

(ii) The reply is in the negative.

23. (a), (b) and (c) The replies are in the affirmative.

24. The reply is in the affirmative.



BULGARIA

21. (i) and (ii) The reply is in the affirmative.
22. (i) (a), (b) and (c) The reply is in the affirmative.  
(ii) The reply is in the affirmative.
23. (a), (b) and (c) The reply is in the affirmative.
24. The reply is in the affirmative.

CHILE

21. (i) and (ii) The reply is in the affirmative.
22. (i) (a), (b) and (c) The reply is in the affirmative.  
(ii) Any information prescribed by national law and regulations.
23. (a) and (b) The reply is in the affirmative.  
(c) Such measures as may be prescribed by the competent health authorities.
24. The reply is in the affirmative.

CHINA

21. (i) and (ii) The replies are in the affirmative.
22. (i) and (ii) The replies are in the affirmative.
23. (a), (b), (c) The replies are in the affirmative.
24. The Government is in favour of this provision.

FRANCE

21. The reply is in the affirmative.
22. The local authorities should have the widest latitude in this matter.
23. The reply is in the affirmative.
24. The reply is in the affirmative.

GREAT BRITAIN

21. (i) The reply is in the affirmative.  
(ii) The Government are in sympathy with the policy embodied in this Question and they consider that it should be applied as a general rule. In certain cases, however, its application would involve unnecessary hardship to recruited workers. For example, workers recruited in the southern part of the Tabora District in Tanganyika for work on the Lupa goldfields may, at the point of recruitment, be nearer the District Officer, Tabora, than the Labour Inspector

on the mines. To bring them before the former would, however, involve an addition to their journey of probably 150 miles through an area infested with sleeping sickness, in a direction opposite to that which they should follow to reach their place of employment. In the circumstances the Government would be unable to accept an obligation to apply such a provision as an invariable rule. It is therefore suggested that the provision proposed in paragraph (ii) of this Question should be qualified by a proviso to the effect that in cases where undue hardship or inconvenience would be caused by bringing the recruited workers before the public officer nearest to the place of recruiting, they should be brought before a public officer at the most convenient place.

The replies to both parts of this Question relate to all systems of recruiting.

22. (i) Yes.

(ii) It is not considered necessary to stipulate that any other information should be included in the memorandum.

This answer applies to all systems of recruiting.

23. (a) and (b) It is not considered that two medical examinations are necessary in all cases ; moreover when the distance between the place of recruitment and the place of employment is short the place at which the medical examination is held does not appear to be material. It is therefore suggested that the Convention should stipulate :

(i) That every recruited worker should be medically examined at least once ;

(ii) That in cases where it is not possible for the medical examination to take place before the contract is entered into, the public officer should authorise the conclusion of the contract only if he is reasonably satisfied that the recruited worker is physically fit to undertake the journey and the work for which he is being engaged, and on condition that the recruited worker will be medically examined on arrival at the place of employment or as soon as possible thereafter, and, if necessary, also on condition that suitable measures will be taken for his acclimatisation and adaptation ;

(iii) That it should be left to the discretion of the competent authorities to prescribe the medical examinations (one as near as possible to the place of recruitment, and the other at or near the place of employment) in all cases where they consider them to be necessary in order to ensure that the recruited workers are fit for any protracted journey which it may be necessary for them to undertake and also that on their arrival at the place of employment they shall not start work unless and until they are fit to do so.

(c) It is agreed that such measures should be taken *where necessary*. This answer applies to all systems of recruiting.

24. The Government agree that the amount of the advances of wages that may be made to a recruited worker should be limited and regulated. As regards the second part of the Question, they would not be able to accept, for general application, a stipulation that advances of wages should be made in the presence of a public officer. They suggest, however, that it might be stipulated that in all cases where an advance has been made before or at the time of the attesta-

tion of the contract, particulars of the advance should be entered on the contract. In the case of recruiting by worker-recruiters it is considered that advances should not be allowed.

### INDIA

21, 22, 23 and 24. See the reply to Question 14.

### IRAQ

21. (i) The Government thinks that such provision is desirable.  
(ii) The Government's replies should be taken as its views on the general principles involved and not with particular reference to details.
22. (i) (a), (b) and (c) The replies are in the affirmative.  
(ii) Yes ; in consideration of the results of the medical examination referred to in Question 23 below.
23. (a), (b) and (c) The replies are in the affirmative.
24. The minimum should be prescribed by regulations.

### ITALY

21. The Government has no objection to a provision requiring recruited workers to be brought before the local authorities nearest to the place of recruiting in order to make sure that the requirements of the laws and regulations have been properly observed.

22. It seems neither necessary nor practicable to provide each worker in advance with any document setting forth the conditions of engagement if the recruiting is done under the strict control of the local authorities in such a way as to ensure the most rigorous observance of the existing provisions relating to labour (hours of work, rest periods, rest days, wages, etc.).

23. The Government agrees to the proposals in respect of medical examinations at the place of recruiting and at the place of employment and the institution of measures which may be necessary for the acclimatisation and adaptation of the recruited worker.

24. The Government approves of the conditions suggested for the regulation and control of advances of wages made to recruited workers.

### NETHERLANDS

21. (i) Yes, such is the rule for the recruitment of workers for employment under penal sanctions ; the same rule is contemplated in respect of free workers.

(ii) No, the Government considers it sufficient to exercise this supervision at the place of embarkation. In the Netherlands Indies, it is necessary to concentrate the administrative supervision at the places of embarkation, as the only recruitment in Java and Madura

is for undertakings in the Outer Provinces or abroad. This holds good of all systems of recruitment which are subject to the supervision of the public authorities.

22. (i) Workers recruited in Java and Madura for employment under penal sanctions do not themselves get the documents containing the information referred to in paragraphs (a) to (c). The contract, which stipulates the conditions of engagement as well as the amount of advances to be remitted to the recruit at the place of landing or at the destination, and the medical certificate showing details of identification are sent to the competent officials nearest to the place of employment. Having regard to the existing provisions in the Netherlands Indies (presentation of the clauses of the contract before leaving and regular inspection on the spot in the undertakings in the Outer Provinces, when information on the contents of the contract may be requested), a work book is not considered absolutely necessary. Sometimes the free workers receive an extract of the principal clauses of the contract to be concluded before their departure from Java for the Outer Provinces. A regulation in this respect is considered desirable.

Under organised *laukeh* recruiting (see the reply to Question 17) a document such as that referred to in the preceding paragraphs and known as *perdjandjian* is delivered to all emigrants leaving for the Outer Provinces, whether penal sanction or free workers. This point should be left to the national laws and regulations to be settled.

(ii) The reply is in the negative.

23. (a) A medical examination of workers recruited in Java and Madura for employment under penal sanctions is required. This examination may take place either in the interior of the country or at the place of embarkation. There is no advantage in having the medical examination as near as possible to the place of recruitment, since, in accordance with the regulations relating to recruitment, the rejected recruits are sent to their place of origin at the cost of the recruiting agent. The medical examination of free emigrant workers is likewise considered desirable. At present, the regulations relating to recruitment are not applicable to this category of workers (see the reply to Question 4).

Recruits forwarded by the V.E.D.A. have to pass a medical examination beforehand (see the end of the reply to Question 17 (ii)).

(b) The Government does not consider it necessary to require a second medical examination of workers on their arrival at the destination ; moreover, if the officer in charge of the supervision of recruitment, in his unfettered discretion, considers that the recruit is under age or is, in his view, unfit for the work for which he is to be employed, he is entitled to refuse to take part in the conclusion of the contract of engagement.

In practice—at any rate in the case of the more important companies—the recruits are often transferred for some days after their arrival to a hospital where they are kept under observation. As, however, there may be other countries in which the situation is entirely different and in which a measure of this kind would be desirable, this question should be left to be settled by the national laws and regulations.

(c) The need for such measures is not felt in the Netherlands Indies. There is no great difference between the climate of Java and that of

the Outer Provinces. Moreover, it is provided in the *Eigen-werving* licences that the supply of blankets by undertakings at high altitudes may be required where necessary. Licences are not issued for the recruitment of workers for employment abroad if the countries concerned have a very different climate.

As regards employment on underground work in coal mines, it is desirable, where necessary, to accustom gradually the recruited workers to this work. As has already been pointed out, the need for compulsory provisions has not been felt; besides, in the Netherlands Indies such provisions would be more appropriate to regulations relating to working conditions than to those relating to recruitment.

As, however, there might be other countries in which the situation is quite different and in which such a measure would be desirable, this question should be left to the national laws and regulations to be settled.

24. The Government considers it most desirable to fix the maximum amount of the advances. As regards contract labour, this question has been regulated in the Netherlands Indies in such a way that only a prescribed maximum amount may be advanced in connection with recruitment; moreover, under the Coolie Ordinance no worker serving under a penal sanction contract in the Outer Provinces can be given an advance exceeding the amount fixed by the public authorities.

In 1926, when the amount of the advance to be made in connection with recruitment was reduced, it was at the same time laid down that this advance could only be remitted at the place of landing or at the destination. This measure was taken as it was found in practice that the advance, intended for the purchase of household articles and similar objects on reaching the undertaking, had generally already been gambled away on board ship in the course of the voyage. This is why payment in the presence of a recruiting officer is not considered desirable, and payment at destination in presence of public authorities is not considered necessary. The right to make complaints to the Labour Inspectorate in the event of the advance falling into wrong hands is in such cases an adequate safeguard against abuse. Other sums of money remitted to the recruits in Java at the time of the recruitment are regarded as a gift and cannot therefore be recovered subsequently.

As for free labour, regulations concerning the payment of advances at the time of recruitment will be framed in the same terms as those in respect of contract labour when the regulations relating to recruitment are revised.

## SPAIN

21. Recruited workers should be brought before an officer of the administration, for the purpose indicated in the question, as near as possible to the place of recruiting, particularly in the case of professional recruiting and direct recruiting by employers.

22. Yes. The document should also include an acceptance by the worker of the general conditions of employment laid down by the administration.

23. (a) and (b) The worker should be medically examined, and the examination should take place as near as possible to the place of

recruiting. A second medical examination, upon which the final decision would depend, does not seem to be desirable as a general rule.

The recruiter should be required to effect the decisive medical examination before delivery of the document referred to in Question 22.

(c) Every possible step should be taken for the acclimatisation and adaptation of recruited workers, and the Draft Convention should stipulate that this be done.

24. Yes, but the payment of advances of wages should be conditional.

#### UNION OF SOUTH AFRICA

21. (i) The reply is in the affirmative.

(ii) As far as practicable.

22. (i) (a), (b) and (c) In the Union there is no agreement until the contract has been attested before a public officer; this contract should contain particulars of identity of the worker, conditions of employment and of advances made to the worker. It does not appear necessary for the worker to be furnished with such a document.

(ii) No further information is apparently necessary.

23. (a) A medical examination is considered desirable in most cases and compulsory where the nature of the employment requires first-class health. As far as practicable it should be conducted near to the place of recruiting.

(b) Same as (a) above.

(c) Yes, particularly in spheres of labour demanding first-class health.

24. The reply is in the affirmative.

#### YUGOSLAVIA

21 and 22. The Government agrees that the administrative supervision should provide the most far-reaching protection possible for the recruited workers.

23. The workers should be medically examined as near as possible to the place of recruiting.

24. The Government considers it necessary to ensure full protection for advances of wages.

#### *Travelling Expenses*

25. Do you consider :

(a) that the expenses of the journey of recruited workers to the place of employment and all expenses incurred for the protection of the workers during the journey should be borne by the recruiter or employer ;

(b) that the expenses of returning home recruited workers found unfit for employment by medical examination should be borne by the recruiter or employer ;

(c) that the expenses of returning home recruited workers should be borne by the employer or recruiter in any other cases than that mentioned in (b) above ?

### *Subsistence*

26. Do you consider that recruited workers travelling to the place of employment should be furnished with everything necessary for their subsistence during the journey ?

### *Transport*

27. (i) Do you consider that it should be provided that recruited workers should, whenever possible, be transported to the place of work ?

(ii) Do you further consider that the conditions of transport should be such as to ensure proper sanitary arrangements, no overcrowding, medical attention at certain points when the journey is long, and if necessary suitable accommodation for the night ?

### *Journeys on Foot*

28. (i) Do you consider that measures should be taken when recruited workers have to make long journeys on foot to the place of work :

(a) to provide rest camps or rest houses at suitable points on the main routes traversed by labour and to ensure that such camps or rest houses are in proper sanitary condition and have the necessary facilities for medical attendance ;

(b) to ensure that the length of the daily journey is compatible with the maintenance of the health and strength of the workers ?

(ii) Should any other provisions be laid down for the protection of recruited workers journeying on foot to the place of work ?

### *Convoyers*

29. Do you consider that when recruited workers have to make long journeys in groups to the place of work, whether on foot or by transport, they should in general be convoyed by a responsible person ?

### BELGIUM

25. (a) and (b) The reply is in the affirmative.

(c) The repatriation expenses of the worker should, in principle, be borne by the recruiter or the employer upon the normal

expiry of the contract of employment. Other cases, such as that of the breaking of the contract owing to the fault of the worker, should be dealt with by national laws and regulations and referred for consideration and decision to a judge.

26. The reply is in the affirmative.

27. (i) and (ii) The replies are in the affirmative.

28. (i) (a) and (b) The reply is in the affirmative.

(ii) The measures of protection already laid down appear to be sufficient.

29. The reply is in the affirmative.

#### BULGARIA

25. (a), (b) and (c) The reply is in the affirmative.

26. The reply is in the affirmative.

27. (i) and (ii) The reply is in the affirmative.

28. (i) (a) and (b) The reply is in the affirmative.

(ii) The reply is in the affirmative.

29. The reply is in the affirmative.

#### CHILE

25. (a), (b) and (c) The reply is in the affirmative.

26. The reply is in the affirmative.

27. (i) and (ii) The reply is in the affirmative.

28. (i) (a) and (b) The reply is in the affirmative.

(ii) The reply is in the negative.

29. The reply is in the affirmative.

#### CHINA

25. (a), (b), (c) The replies are in the affirmative.

26. The reply is in the affirmative.

27. (i) and (ii) The replies are in the affirmative.

28. (i) (a) and (b) The measures suggested should be taken.

(ii) The Government proposes no other provisions.

29. The reply is in the affirmative.



FRANCE

25. The reply is in the affirmative.  
26. The reply is in the affirmative.  
27, 28 and 29. The replies are in the affirmative.

GREAT BRITAIN

25. (a) Yes, as a general rule. (It is however necessary to observe that, if the Convention contains a provision to the effect proposed, it may not be possible to apply it in the case of recruitment for employment in the Union of South Africa. Nevertheless it is considered that the provision in the Convention should not contain a qualification in respect of such employment, but that the non-application of this provision should be regarded as "modification" in its application to the territories concerned.)

In the case of recruiting by worker-recruiters it is frequently possible for employers to make arrangements for the transport of the recruits. In many cases, however, it is not possible for employers to make such arrangements in advance, and consequently the Government are unable to agree to the insertion in the Convention of a provision which would make it obligatory for the expenses of the journey to be borne by the employer in all cases of recruiting by worker-recruiters.

(b) The reply is in the affirmative.

(c) It is suggested that these expenses should be borne by the employer or recruiter in the following additional cases :

(1) When the recruited worker falls sick on the journey and is unable to proceed ;

(2) If it is found that the regulations governing engagement or employment have not been complied with by the recruiter or employer ;

(3) If during his term of employment the worker becomes incapacitated by accident or disease. It is, however, suggested that, in cases where the incapacity is due to the worker's own misconduct or neglect, the question of his being sent back at the employer's expense should be left to be determined by the competent authority.

(Note. — The answers to paragraphs (b) and (c) of this Question apply to all forms of recruiting, including recruiting by workers.)

26. Yes, subject to the same reservations as mentioned in the reply to paragraph (a) of Question 25.

27. Yes, except in the case of recruiting by worker-recruiters, in respect of which the considerations referred to in the reply to paragraph (a) of Question 25 apply.

28. (i) Yes. (This answer applies to all forms of recruiting.)

(ii) The Government have no other suggestions to offer.

29. Yes. (In the case of recruiting by worker-recruiters the latter will normally be the convoyers.)

INDIA

25 to 29. See the reply to Question 14.

'IRAQ

25. (a) The reply is in the affirmative.

(b) The reply is in the affirmative.

(c) On the completion of the employment, repatriation expenses should be borne by the employer or the recruiting licensee.

26. The reply is in the affirmative.

27. (i) The reply is in the affirmative.

(ii) The reply is in the affirmative.

28. (i) (a) and (b) The reply is in the affirmative to all points.

(ii) Optional to the competent authority.

29. The reply is in the affirmative.

ITALY

25. The Government considers that the expenses of the journey and incidental expenses incurred during the journey to the place of work and the expenses of returning a recruited worker home, whatever may be the reason therefor, should be borne by the recruiter or employer.

26. The reply is in the affirmative as regards the subsistence of recruited workers during the journey to the place of work.

27. The reply is in the affirmative as regards the proposals relating to the transport of recruited workers, the sanitary arrangements to be provided during the journey and at halting places, the provision of suitable accommodation for the night, etc.

28. (i) The Government approves of the measures proposed in respect of journeys on foot (a) as regards the provision of rest camps or rest houses and the condition thereof; (b) as regards the length of the daily journey.

(ii) The Government does not consider it necessary to provide for other measures.

29. The Government considers it desirable that, in this case, recruited workers should be convoyed by a responsible person.

NETHERLANDS

25. (a) Doubtless.

(b) Doubtless.

(c) As has already been pointed out in the replies to Questions 21 and 23, contracts of employment of workers recruited in Java and in Madura are concluded before their departure from Java; these workers

must undergo a medical examination before their departure from Java. If, owing to refusal or for other reasons, the negotiations do not result in the conclusion of a contract, the recruits are repatriated to their *desa* at the cost of the recruiting organisation.

In the Outer Provinces it is prohibited to conclude contracts under penal sanctions with workers recruited in Java and in Madura. In case of exemption from this prohibition, the conditions of repatriation are laid down. For example, it has been specified in the licence issued to the V.E.D.A. for *laukeh* recruiting (see the reply to Question 17) that in the event of the recruits being rejected or refraining from engaging themselves within ten days, they must be brought back to their *desa* in Java at the cost of the organisation.

Having regard to the foregoing, the Netherlands Government considers that the cost of repatriation should be borne by the recruiting organisation or by the employer in all cases in which the negotiations do not result in the conclusion of an engagement.

26. Yes, in all cases in which the travelling charges of the workers are paid, provision should be made also for the subsistence of the recruited workers.

27. (i) Yes; in the Netherlands Indies there are no cases of workers recruited in accordance with the regulations relating to recruitment, being obliged to travel long distances on foot unnecessarily.

(ii) The reply is in the affirmative; the nature of the territory of the Netherlands Indies is such that the longest journeys are effected by sea. The transport of workers, to be employed under penal sanctions, from their place of landing until they reach the place of employment is regulated in the manner contemplated in the question.

The transport in Java is effected either by bus or by railway; in this way the transport from the *dépôt* in the interior to the *dépôt* at the port of embarkation is effected in one day.

28. (i) (a) and (b) The reply is in the affirmative; the conditions referred to here, however, do not as a rule occur in the Netherlands Indies (see the reply to Question 27).

(ii) Other provisions are not considered necessary. The question of regulating the transport of free recruits, in the same way as that of workers under penal sanctions, has been taken into consideration.

29. Yes, this is done in the Netherlands Indies.

## SPAIN

25. (a) The expenses of the journey should be borne by the recruiter or the employer.

(b) The expenses of returning home recruited workers found unfit for employment on medical examination should also be borne by the recruiter or employer. It is therefore desirable that the medical examination should take place as near as possible to the place of recruiting.

(c) The expenses of returning home recruited workers should also be borne by the recruiter or employer in cases other than that mentioned in clause (b) unless the employment is terminated for some serious reason for which the worker is responsible.

26. The reply is in the affirmative.

27. Yes, whenever transport facilities exist.

28. (i) The measures indicated in the question should be taken to ensure that in no case will more than a normal effort be required of the recruited worker.

(ii) A provision should be included requiring that there should be an inspection service to ensure the observance of these stipulations.

29. Yes, especially when the group of recruited workers numbers at least 25 men, a long journey being understood to mean a journey of more than four days.

#### UNION OF SOUTH AFRICA

25. (a) No. Wages would probably fall correspondingly and, what is of great importance, the voluntary labourer (of whom there are 100,000 to-day) would disappear as he would then find it more advantageous to be recruited in the ordinary way, the reason being that his travelling expenses were being borne by the recruiter.

(b) The reply is in the affirmative.

(c) Yes, in cases of irregular acts of employers or recruiters, in securing workers under false representations.

26. The reply is in the affirmative.

27. (i) and (ii) The replies are in the affirmative.

28. (i) (a) and (b) The replies are in the affirmative.

(ii) No apparent necessity.

29. The reply is in the affirmative.

#### YUGOSLAVIA

25. All travelling expenses should be borne by the employer.

26. The transport should be arranged under as favourable conditions as possible for the recruited worker.

27, 28 and 29. See the reply to Question 26.

#### *Families of Recruited Workers*

30. Are you of opinion that the provisions for the protection of recruited workers outlined in Questions 21 to 29 should also be applied to the family of a recruited worker when the family has been authorised to accompany him to the place of work?

#### *Special Case of Recruiting by Workers*

31. Do you consider that provisions for the protection of recruited workers outlined in Questions 21 to 30 should also

apply in the particular case of the recruiting of workers for a given undertaking by manual workers employed by that undertaking ?

BELGIUM

30. The reply is in the affirmative.

31. The reply is in the affirmative.

BULGARIA

30. The reply is in the affirmative.

31. The reply is in the affirmative.

CHILE

30. The reply is in the affirmative.

31. The reply is in the affirmative.

CHINA

30. The Government is of that opinion.

31. The reply is in the affirmative.

FRANCE

30. The provisions referred to in Questions 21 to 29 should be applied to the members of the family of a recruited worker only in so far as they themselves hold a contract of employment. As regards the others, it would be sufficient to stipulate that the expenses of the transport and repatriation of the family as well as those of its subsistence during the journey should be borne by the recruiter or employer.

31. The reply is in the affirmative.

GREAT BRITAIN

30. Yes, except as regards Questions 22 and 24 which are not applicable.

31. The extent to which it is considered that the provisions referred to should apply in the particular case of recruiting by worker-recruiters has been indicated in the replies to Questions 21-29. As regards Question 30, the provision referred to should be applied to the families of workers recruited by worker-recruiters in so far as they are applied to the recruited worker themselves.

## INDIA

30 and 31. See the reply to Question 14.

## IRAQ

30. The reply is in the affirmative on all points.

31. The reply is in the affirmative on all points.

## ITALY

30. The Government is in favour of applying the protective provisions mentioned in the above questions to the family of a recruited worker when he has been authorised to bring his family with him.

31. The reply is in the affirmative, in principle ; the Government, however, makes the following observation. If the recruiting effected for a given undertaking by manual workers employed by that undertaking covers any considerable number of workers, then it should come under the strict control of the competent authority, which would provide all the necessary guarantees to the recruited workers. If, on the other hand, it is only a matter of the incidental recruiting of a small number of workers, the case could not properly be dealt with in international regulations.

## NETHERLANDS

30. The Government does not consider it necessary that members of the worker's family, while only accompanying him, that is to say, without themselves concluding a contract of engagement (Question 21), should be brought before an officer, although, in conformity with the procedure relating to the recruitment of penal sanction labour in Java, they are present at the time of the presentation of the contract of engagement.

The Government does not consider it necessary that they should receive a document ; the names of the members of the worker's family accompanying him and their apparent ages are entered, without further particulars, in the medical certificate mentioned in the reply to Question 22.

If the members of the worker's family are not to be employed, it is not considered necessary that they should undergo a medical examination (Question 23) ; it is also not necessary to provide for regulations regarding advances (Question 24) since they do not receive any.

The provisions referred to in Questions 25 to 29 inclusive should also be applicable to members of the worker's family accompanying him. The expression "family" should be understood to mean wife and minor children, whether born of the same or different mothers. If a recruited worker desires to be accompanied by other members of his family, there is no objection to the travelling expenses being charged to him.

When members of a worker's family themselves conclude a contract of engagement, it is evident that all the provisions relating to the recruitment of workers would be applicable to them.

31. The reply is in the affirmative ; there should be no distinction in this respect.

#### SPAIN

30. Yes, account being taken of the observations made in reply to Questions 9 and 29.

31. The reply is in the affirmative, the situation being the same from the point of view of ensuring the safety of the workers.

#### UNION OF SOUTH AFRICA

30. Family migrations are not approved, but if they should be authorised, the reply would be in the affirmative.

31. Yes, if this system is adopted ; but as stated under 17, this system is not favoured.

#### YUGOSLAVIA

30 and 31. See the reply to Question 26.

### VII. ADDITIONAL PROVISIONS FOR MIGRANT WORKERS

#### *Agreements between Administrations*

32. (i) Do you consider that the recruiting of workers in one territory for employment in a territory under a different administration should be permitted only under conditions stipulated in agreements between the competent authorities of the territories concerned ?

(ii) If so, are you of opinion that such agreements should contain :

(a) in so far as the necessary provisions are not contained in the law or regulations of the territory of recruiting or of destination, as the case may be, provisions concerning the extent to which the recruiting is to be permitted and the circumstances in which it may be wholly or partly suspended, and the conditions under which the recruiting is to be permitted ;

(b) provisions concerning the extent and methods of co-operation between the competent authorities concerned in supervising the execution of the agreement and of the conditions of recruiting and employment ?

(iii) Are there any other matters which should be mentioned in such agreements ?

### *Recruiting Agencies*

33. Are you of opinion that the recruiting of workers in one territory for employment in a territory under a different administration should be permitted only to organisations whose rules have been approved by both administrations, or in the absence of such organisations to recruiting agents licensed in the territory of recruiting ?

### *Administrative Supervision*

34. Do you consider that a public officer at the place of departure should satisfy himself, before authorising the departure of recruited workers, that the conditions laid down in the law or regulations of the territory of recruiting or in the agreement under which recruiting is permitted have been complied with ?

### *Medical Examination*

35. Do you consider that provision should be made :

(a) for the medical examination of recruited workers before departure from the territory of recruiting ;

(b) for the taking of measures immediately before the departure of recruited workers from the territory of recruiting to ensure that they are physically fit and that they have undergone the prescribed inoculations, if any ;

(c) for the medical examination of recruited workers on arrival in the territory of employment when the journey involves a voyage by sea or by inland waterway of a duration to be fixed by the competent authorities concerned ?

### BELGIUM

32. (i) and (ii) The reply to questions (i) and (ii) is in the affirmative provided that this does not exclude the adoption of the course indicated in Question 37. It may be observed that Question (i) has in fact been given too restrictive a wording : " Do you consider that the recruiting of workers . . . should be permitted *only under conditions stipulated in agreements* . . . ? "

(iii) The reply is in the negative.

33. The reply is in the affirmative subject to the reservation made in connection with points (i) and (ii) of Question 32.

34. The reply is in the affirmative.

35. The reply is in the affirmative.

### BULGARIA

32. (i) The reply is in the affirmative.

(ii) (a) and (b) The reply is in the affirmative.



- (iii) The reply is in the affirmative.
- 33. The reply is in the affirmative.
- 34. The reply is in the affirmative.
- 35. (a), (b) and (c) The reply is in the affirmative.

#### CHILE

- 32. (i) The reply is in the affirmative.
- (ii) (a) and (b) The reply is in the affirmative.
- (iii) Any matters which the authorities concerned may deem it desirable to add.
- 33. The reply is in the affirmative.
- 34. The reply is in the affirmative.
- 35. (a), (b) and (c) The reply is in the affirmative.

#### CHINA

- 32. (i) The reply is in the affirmative.
- (ii) The Government is of that opinion.
- (iii) The Government proposes no other provisions.
- 33. The reply is in the affirmative.
- 34. The reply is in the affirmative.
- 35. (a), (b) and (c) The replies are in the affirmative.

#### FRANCE

- 32. The reply is in the affirmative.
- 33. The reply is in the affirmative.
- 34. The reply is in the affirmative.
- 35. The reply is in the affirmative.

#### GREAT BRITAIN

32. It is recognised that, where an Administration allows the recruitment of workers within its territory for employment abroad, it has a special responsibility, and that such recruitment should not be permitted unless there is every assurance that the conditions of employment will be reasonably satisfactory.

On occasion, it may be desirable for the Administrations of the territories concerned to enter into formal agreements covering such matters as those referred to in paragraph (ii) of this Question, and in any case it will always be open to any Administration to decline to allow recruiting in its territory unless the Administration of the country

of employment is prepared to conclude an agreement. It is not therefore necessary for the Convention to include a provision of the kind suggested. In particular the Government do not think it necessary to provide that recruitment in one British dependency, for employment in another, should be conditional on the execution of a formal agreement between the two Administrations concerned.

33. An unqualified provision on the lines of this Question would debar an Administration from permitting, even under licence, the recruiting of workers in its territory by an *employer* (or his duly authorised agent) from the territory of another Administration. The Government see no reason for such a prohibition, which might involve unnecessary inconvenience especially in the case of an employer whose place of business was near the boundary between the two territories. Subject to an appropriate addition to meet such cases, the Government agree that the Convention should contain a provision on the lines suggested in this Question.

34. Yes, subject to the deletion of the words "at the place of departure". In some cases there is necessarily an interval between the attestation of the contracts by the public officer and the time of departure of the recruited workers, and it is not always convenient to reassemble them.

35. (a) and (b) Yes, as a general rule. In certain cases however medical examination prior to departure may be impracticable. It is accordingly suggested that it should be provided in the Convention that, in such cases, recruitment should only be allowed on condition that the public officer attesting the contracts is reasonably satisfied that the recruited workers are physically fit to undertake the journey and the work for which they are engaged; and further that the recruited workers are to be medically examined on arrival at their destination.

(c) The reply is in the affirmative.

#### INDIA

32. (i) The reply is in the affirmative.

(ii) (a) Limitation of the extent of recruitment has not so far been a practical problem in India, but the power to impose restrictions of this character should be retained by the Government of the country in which recruitment takes place.

(b) The reply is in the affirmative.

(iii) Indian experience does not suggest the necessity of providing safeguards that would not be covered by the agreements contemplated in 32 (i) and (ii).

33. Limitation of permission to recruit to approved organisations has not been found necessary in India, where the system of recruitment through licensed recruiting agents has worked satisfactorily, but there is no objection to organisations being allowed to recruit direct under safeguards approved by the administrations of the countries concerned.

34. The reply is in the affirmative.

35. (a), (b) and (c) The reply is in the affirmative.

### IRAQ

32. (i) The reply is in the affirmative.  
 (ii) (a) and (b) The replies are in the affirmative.  
 (iii) Provision should be included for such additional measures as may be deemed advisable by the competent authorities concerned.
33. The answer is in the affirmative in respect of both questions.
34. The reply is in the affirmative.
35. (a), (b) and (c) The replies are in the affirmative.

### ITALY

32 to 38. The Government points out that these are questions which do not concern the Italian colonies. However, it expresses its approval, in principle, of the proposals put forward as regards : agreements between administrations ; recruiting agencies ; supervision by the competent local authorities ; medical examinations at the place of recruiting for the purpose of ascertaining the physical fitness of the recruited worker and effecting the various inoculations which may be considered necessary ; the medical examination on arrival at the place of employment ; the journey of migrant workers and the treatment to be accorded to their families.

### NETHERLANDS

32. (i) The Government believes that it would be desirable to have regulations on this point, it being understood that the initiative must come from the Government of the territory in which recruitment of workers for another territory is effected. In the Netherlands Indies, the recruitment of Natives for employment abroad is prohibited ; when an exemption from this prohibition is granted, the permission to recruit is subject to certain conditions (such as the maintenance of a certain proportion between the numbers of men and women emigrants) and a model contract, or, in the case of free workers, the conditions of the engagement to be concluded, must be specified in the authorisation.

(ii) (a) In the event of an exemption such as that mentioned under (i) being given, the provisions of the Ordinance on recruitment are applicable to the recruitment of workers for abroad — that is to say, the same provisions as those in force in the territory of the Netherlands Indies itself. Such permits are given only for a period of one year, and the number of workers to be recruited is limited. An exception is made in respect of recruitment for Surinam ; in this case, if the maximum number of persons to be recruited is not stated, the permit is valid until cancellation. Moreover, special provisions, including also a complete supervision of the recruitment and of the transport of workers, are applicable to this recruitment. It is intended that these provisions should be included in the new general regulations.

(b) The manner in which the supervision of recruiting is regulated in this case is already evident from the reply to (a). Further, an exemption from the prohibition of recruitment for abroad is given only

in respect of countries in which, in the opinion of the Netherlands Indies Government, there is an adequate Labour Inspectorate, and, in addition, the Government reserves to itself, in such cases, the option of having an investigation made by one of its officers into the conditions of work in the countries in question in respect of workers from the Netherlands Indies.

(iii) Having regard to the fact that it is entirely within the power of the Netherlands Indies Government to grant or to withhold permission for the recruitment of workers for abroad (in order to prevent the development of this recruitment the line of policy adopted consists in limiting this permission to areas to which there is already more or less regular emigration), and to subject all exemptions to certain conditions, it does not seem to be necessary to provide for other measures in this respect.

33. It is already evident from the reply to Question 32 that in view of the existing prohibition of recruitment, there would, in any case, be no question of recruiters recruiting workers, without permission, in the Netherlands Indies for abroad.

To-day, in the event of an exemption from the said prohibition being given, the recruitment is entrusted to the two existing *Eigenwerving* associations. It seems entirely superfluous that foreign authorities should intervene in determining the nature of the regulations governing these organisations.

There is no objection, in principle, to the recruitment of free workers for abroad through *laukehs*, although there has been no such case. In any event, these *laukehs* would have to act on behalf of a foreign Government or a foreign undertaking to which the recruitment licence would be issued, and it is evident that they should be provided with a permit.

34. Workers recruited for abroad present themselves before their departure to the officer in charge of recruitment, who in his turn informs them of the clauses of the contract of engagement to be concluded, just as is done in the case of workers under penal sanctions who leave Java for the Outer Provinces. Where necessary, the consular agent of the country to which the workers are bound may be present, although this is not usual. Having regard to the fact that in recent years free workers may emigrate and that in the Netherlands Indies this class of workers, as has already been several times pointed out in the preceding replies, is not covered by the recruitment regulations, it is specially provided that the contracts of engagement to such workers, in so far as they are bound for abroad, should be presented by the officer in charge of recruitment.

35. (a) Yes, a medical examination is provided for in the regulations relating to recruitment, which — as has already been pointed out — are also applicable to the recruitment of workers for abroad.

(b) For practical reasons, the medical examination including vaccination (with a view to reducing the expenditure on the upkeep of the recruited workers pending their transport) is always held just before their embarkation; this is why the regulation contemplated in (b) is not considered necessary.

(c) It does not seem necessary to provide for such an obligation: the countries to which the emigration of Javanese is permitted would

ordinarily require the workers to undergo a medical examination on their arrival ; nevertheless, the competent authorities of these countries should decide whether such examination is necessary. There is no particular reason why a sea voyage should call for such a measure. As care is taken to see that sufficient accommodation is provided on the vessels of transport, a sea voyage is physically far less exhausting to the worker than if he had to make a long journey on foot.

#### SPAIN

32. Yes ; but it should be understood that the Draft Convention would not apply in the case of workers belonging to a territory under one administration who emigrate voluntarily and without the intervention of recruiting agents for employment in a territory under another administration (though this case would not come within the definition of recruiting).

33. It seems logical that recruiting should be limited to organisations approved by the two administrations or agents licensed in the territory of recruiting.

34. Yes, subject to the reservation made in the reply to Question 32.

35. (a) and (b) Medical examination should be obligatory before the workers leave the territory of recruiting.

(c) A further medical examination should be required only when the voyage is of such duration and is made under such conditions as might affect the health of the workers.

#### UNION OF SOUTH AFRICA

32. (i) The reply is in the affirmative.

(ii) (a) and (b) The replies are in the affirmative.

(iii) Yes : (a) provision for the effective repatriation of recruited workers ; (b) the payment of compensation to workers and dependants of deceased workers due under any law or regulation in force within the area of employment.

33. The reply is in the affirmative.

34. The reply is in the affirmative.

35. (a) and (b) The replies are in the affirmative.

(c) Yes ; in the Union this difficulty does not arise.

#### YUGOSLAVIA

32. The reply is in the affirmative.

33. The reply is in the affirmative.

34. The reply is in the affirmative.

35. (a), (b) and (c) The medical examination should take place immediately before the departure of the worker from his country of origin and after his arrival at his destination. It should be added that the worker should also be medically examined after his return to his country of origin.

*Journey of Recruited Migrant Workers*

36. (i) Do you consider that, when the journey of recruited workers involves a voyage by sea or inland waterway of a duration to be fixed by the competent authorities concerned, the law or regulations or the agreement should prescribe :

(a) which administration is responsible for the protection of the workers during the voyage ;

(b) the measures to be taken to ensure that the vessels used are suitably adapted for such transport ;

(c) that the workers are convoyed by a responsible person ;

(d) that all necessary arrangements are made for the medical assistance and for the welfare of the workers during the voyage ?

(ii) Are you of opinion that any other provisions should be made for the protection of recruited migrant workers who journey by sea or inland waterway ?

BELGIUM

36. (i) (a), (b), (c), (d) The reply is in the affirmative.

(ii) Other provisions would not appear to be necessary.

BULGARIA

36. (i) (a), (b), (c) and (d) The reply is in the affirmative.

(ii) The reply is in the affirmative.

CHILE

36. (i) (a), (b), (c) and (d) The reply is in the affirmative.

(ii) The provisions indicated in paragraph (i) would seem to be sufficient.

CHINA

36. (i) (a), (b), (c) and (d) The replies are in the affirmative.

(ii) (No reply is given.)

FRANCE

36. All the measures envisaged under this head should be incorporated in the provisions relating to enforcement.

## GREAT BRITAIN

36. (i) The reply is in the affirmative.  
(ii) The Government have no other suggestions to offer.

## INDIA

36. Fixation of responsibility for the protection of the workers during the voyage by and on someone is desirable. Where emigration takes place by ordinary passenger ship protective measures should be the same as for ordinary deck-passengers. Where workers travel by special ships the question of responsibility for protection and of the nature and extent of the protection to be given should be adjusted by agreement between the administrations concerned. It is unlikely that failing such agreement unilateral action would be effected. In any case it is extremely unlikely that India would permit emigration in such a contingency.

## IRAQ

36. (i) (a), (b) and (c) The replies are in the affirmative in all cases.  
(ii) See the reply to Question 32 (iii).

## ITALY

36. See the reply to Question 32.

## NETHERLANDS

36. (i) (a) The reply is in the affirmative. In accordance with the regulations relating to recruitment, the duties connected with the transport of workers by sea (the provision of suitable accommodation, adequate food, drinking water and other objects of primary necessity, all of good quality) are incumbent on the recruiting agency which is thus responsible for the protection of the workers on behalf of the persons for whom the recruiting is effected.

(b) Yes, the transport of workers for abroad is effected by vessels belonging to certain shipping companies, which are generally specified. Where necessary, the permission to recruit is subject to the condition that the transport will be effected on boats flying the Netherlands flag, which are covered by the provisions of the Ordinance on navigation (*Schepenordonnantie*) in force in the Netherlands Indies.

(c) It has not seemed necessary to stipulate this expressly.

(d) The reply is in the affirmative; there is, as a rule, a doctor on board during the voyages in question. Moreover, in case of need, the exemption from the prohibition of recruiting includes the condition that where the transport of a stated number of persons is concerned a doctor should be on board.

(ii) Other provisions have not seemed necessary. The above observations, consequently, apply only to the transport in both directions of Native workers recruited in Java for abroad, but not to the transport of foreign workers recruited elsewhere (such as Chinese workers recruited in China or in the Straits Settlements for the undertakings in the Netherlands Indies) with which the Government of the Netherlands Indies is not concerned.

#### SPAIN

36. Yes. As regards clause (c) of paragraph (i), special provision should be made for placing under the convoy of a responsible person recruited workers who form a group of at least 25 men.

#### UNION OF SOUTH AFRICA

36. (i) (a), (b), (c), (d) The replies are in the affirmative.  
(ii) No suggestions.

#### YUGOSLAVIA

36. The reply is in the affirmative.

37. Do you consider that in default of agreement between the administrations concerned, unilateral measures of protection should be taken either by the country for which or by the country in which the recruiting is effected ?

#### BELGIUM

37. The reply is in the affirmative.

#### BULGARIA

37. The reply is in the affirmative.

#### CHILE

37. The reply is in the affirmative.

#### CHINA

37. The reply is in the affirmative.

#### FRANCE

37. The reply is in the affirmative.



## GREAT BRITAIN

37. Yes, in so far as the measures of protection are within the competence of the administration concerned.

## INDIA

37. See the reply to Question 36.

## IRAQ

37. The Government has no strong views on the subject of the question raised.

## ITALY

37. See the reply to Question 32.

## NETHERLANDS

37. As will be seen from the replies to the preceding questions, the protection of workers recruited in the Netherlands Indies for abroad is provided for. In so far as workers are recruited abroad to be employed in the Netherlands Indies (particularly, in China, for work on tin mines, tobacco estates and certain coal mines, and at Singapore for the *panglongs*, small Chinese undertakings for felling timber and small cognate undertakings at Riouw and its dependencies and in the department of Benkalis), there is no objection to this recruitment being subject to special conditions — so far as this is not already the case. As for the recruitment in China, which is effected chiefly by the Deli Planters' Society and the two big tin mines of Banka and Billiton, the necessity for more elaborate regulation has not been felt.

The recruitment at Singapore for the *panglongs* has been suspended during recent years. The Government of the Netherlands Indies will be glad to collaborate in the abolition of the undesirable practices connected with this recruitment (see p. 227 of the Grey Report). It is in no way incumbent on the Government of the Netherlands Indies to provide for the protection of the Chinese *panglong* workers before their employment in the Netherlands Indies.

## SPAIN

37. Yes, on condition that such unilateral measures do not constitute a disguised prohibition designed to hinder the spontaneous movement of labour.

## UNION OF SOUTH AFRICA

37. The reply is in the affirmative.

YUGOSLAVIA

37. The reply is in the affirmative.

*Families of Recruited Migrant Workers*

38. Are you of opinion that the provisions for the protection of recruited migrant workers outlined in Questions 32 to 37 should be applied to the family of a recruited migrant worker when the family has been authorised to accompany him to the place of employment ?

BELGIUM

38. The reply is in the affirmative.

BULGARIA

38. The reply is in the affirmative.

CHILE

38. The reply is in the affirmative.

CHINA

38. The reply is in the affirmative.

FRANCE

38. The same observations as on Question 36.

GREAT BRITAIN

38. The provisions suggested in Questions 32 and 33 are inapplicable. The Government agree that the provisions suggested in Questions 34-37 should be applied to the families of recruited workers to the same extent as they have accepted them for application to the recruited workers themselves.

INDIA

38. The reply is in the affirmative.

IRAQ

38. The reply is in the affirmative.

## ITALY

38. See the reply to Question 32.

## NETHERLANDS

38. The greater part of the women emigrating abroad themselves conclude an engagement. Therefore, the provisions governing male workers are applicable to them, whether they are married or not. As for the other members of the worker's family accompanying him, the provisions relating to transport referred to in the reply to Question 36 are of course applicable to them. The supervision of public authorities and medical examination are, however, not considered necessary (see the reply to Question 30).

## SPAIN

38. Measures for the protection of migrant workers should extend to their families when these accompany them.

## UNION OF SOUTH AFRICA

38. The reply is in the affirmative.

## YUGOSLAVIA

38. The reply is in the affirmative.

## VIII. APPLICATION OF ARTICLE 421 OF THE TREATY OF PEACE

39. (i) Do you consider that the proposed international regulations should contain a special provision designed to ensure their widest possible application in the territories referred to in Article 35 of the Constitution of the Organisation (Article 421 of the Treaty of Peace) ?

(ii) If so, do you consider that this provision might be drafted in the same form as Article 26 of the Convention concerning forced or compulsory labour ?

## BELGIUM

39. (i) and (ii) The replies are in the affirmative.

## BULGARIA

39. (i) and (ii) The reply is in the negative.

CHILE

39. (i) and (ii) The reply is in the affirmative.

CHINA

39. (i) The Government considers this desirable.  
(ii) The reply is in the affirmative.

FRANCE

39. The reply is in the affirmative.

GREAT BRITAIN

39. (i) The Government do not see any necessity for the insertion of a special provision of the kind suggested since they consider that Article 421 of the Treaty of Versailles already constitutes a sufficient obligation to ensure the widest possible application of all International Labour Conventions, which a Member ratifies, in the territories referred to in that Article.

Nevertheless the Government would have no objection to the inclusion of such a provision provided it is appropriately worded.

(ii) The Government do not consider that a provision in the same form as Article 26 of the Convention concerning forced or compulsory labour would be appropriate for inclusion in a Convention containing provisions of the kind contemplated in this Questionnaire, for the following reasons :

(a) In the view of the Government an undertaking to " apply " a Convention in a Colony implies taking some positive action (whether legislative or administrative) to give effect to the provisions of the Convention. As indicated in the reply to Question 2 there are British Colonies in which there is no recruiting of labour of the kind to which the provisions of the proposed Convention are intended to apply. In such cases the Government would regard the Convention as *inapplicable*, and they are unwilling to accept a formula under which they would appear to give an undertaking that the Convention would be " applied " in such cases.

(b) Moreover, Article 26 of the Forced Labour Convention is open to the criticism that the reference in it to Article 421 of the Treaty of Versailles is in such a form as to imply that that Article does not impose a general obligation (subject to exceptions which are allowed in certain specified circumstances), but merely affords a procedure for limiting the general obligation embodied in the first sentence of Article 26.

The text of an application Article, embodying an appropriate reference to Article 421 of the Treaty of Versailles, has been suggested in the reply to Question 2.

INDIA

39. This question does not concern India.

IRAQ

39. The Government has no views.

ITALY

39. It does not seem advisable to adopt special provisions for the application of the Convention to colonies, particularly if the principle is adopted that the rules embodied in the Convention in question should be applied to each colony, possession or protectorate with the modifications necessary to suit local conditions. However, the Government states that it is not opposed to the proposals suggested in this question.

NETHERLANDS

39. (i) The reply is in the affirmative.

(ii) The reply is in the affirmative, although a reservation such as that referred to in the reply to Question 4 has to be made, i.e. that the regulations should be applicable only in territories to be specified.

SPAIN

39. This provision might be included in the international regulations in the same form as it appears in the Forced Labour Convention.

UNION OF SOUTH AFRICA

39. (i) and (ii) The replies are in the affirmative.

YUGOSLAVIA

39. The reply is in the affirmative.

THE PROGRESSIVE ELIMINATION OF RECRUITING

40. Do you consider it desirable that the International Labour Conference should adopt a Recommendation concerning the progressive elimination of recruiting by :

(a) the improvement of conditions of labour ;

(b) the development of means of communication ;

(c) the creation of public institutions, or institutions under public supervision, for facilitating and if necessary controlling the voluntary movement of labour to areas where it is demanded,

as, for example, public employment exchanges or other governmental organisations, workers' co-operative, provident or other associations, or organisations of employers ?

BELGIUM

40. The reply is in the affirmative.

BULGARIA

40. (a), (b) and (c) The reply is in the affirmative.

CHILE

40. (a), (b) and (c) The reply is in the affirmative.

CHINA

40. The reply is in the affirmative.

FRANCE

40. A Recommendation concerning the progressive elimination of recruiting would seem for the present neither pressing nor necessary, in view of the fact that in a number of colonial territories labour is abundant, workers spontaneously offer themselves and are engaged in the ordinary way.

GREAT BRITAIN

40. The Government do not wish to dissent from the view that the final object to be attained is the obtaining of workers by the spontaneous offer of labour.

It is, however, implied in this Question that one of the reasons why recruiting is necessary is that conditions of employment are not sufficiently favourable to attract the spontaneous offer of labour. This is not the case in a number of areas where the demand for labour is at present met by recruiting. For example, in Ceylon and Malaya, the conditions of employment are so attractive, by comparison with the conditions in the areas from which the labour is drawn, that there are always large numbers of labourers not only willing but anxious to be recruited. This observation also applies in the case of certain forms of employment in Africa for which labourers are recruited. In certain dependencies in the Western Pacific also, organised recruiting affords the only practicable means of collecting, from their widely scattered island homes, Native labourers who wish to obtain employment in the plantations and quarries on distant islands where alone there is any considerable demand for wage-earning labour.

The Government also consider it their duty to bring to the notice of the Conference the experience of certain territories in Africa where, in the course of the last few years, the lure of the possibility of industrial employment, at higher wages than can be earned in the native areas, coupled with the development of means of communication has led to the spontaneous influx into the centres of industrial employment of large numbers of Natives who have travelled great distances from their homes in the hope of securing employment. It has been the recent experience in one of these territories that the numbers of Natives who have sought employment in this manner have been greatly in excess of the amount of employment available, with the result that thousands of Natives have congregated in the neighbourhood of the mines and have remained there in idleness in the hope of being eventually engaged. It is unnecessary to enlarge on the undesirable consequences arising from this state of affairs, not only at the centres of employment, but also in the tribal areas as a result of the wastage of man power and the purposeless neglect of cultivation and dependants.

In another of the territories mentioned there are no great centres of industrial employment, but it has been found that large numbers of Natives have drifted away in search of employment in other territories, without any certainty of employment or repatriation, or facilities on the journey, or arrangements for remittances to their dependants, all of which would be assured to them under a properly regulated system of recruiting.

It may, of course, be said that these advantages could equally well be assured under a system of engagement at public employment agencies or through employers' organisations under public supervision. Owing, however, to the extensive areas of these territories, and to the fact that the calls for labourers from any given area are intermittent, it would clearly be impracticable, on financial grounds alone, to establish branches of such agencies throughout these territories.

In any event, the problem at the moment in these territories seems to be the necessity of finding some means of restricting the spontaneous movements of large numbers of Natives rather than the multiplication of inducements and facilities for such movements.

In certain other British dependencies in Southern Africa, where a properly regulated system of recruitment has been in operation for a number of years, the Natives are aware that when there is a demand for their services a recruiting agent will visit their area, and that if recruited they will be assured of employment and that satisfactory arrangements will be made for their transport and accommodation. In these territories, therefore, it is natural that the Natives should prefer to make use of these facilities rather than to undertake long and fruitless journeys on their own initiative in search of employment.

In the light of this experience, the Government are forced to the conclusion that, in order to combat the unfortunate consequences of the unregulated movements of Natives in and from certain territories, it may be necessary to contemplate an extension rather than a contraction of properly regulated and controlled arrangements for recruiting, though of course every encouragement will continue to be given to the extension of the operations, under public supervision, of employers' organisations for engaging and forwarding Native labourers, in areas where it is possible for such organisations to function economically and efficiently.

In these circumstances it is not considered that any useful purpose would be served by the adoption by the Conference of a Recommendation on the lines indicated in this Question.

#### INDIA

40. (a), (b) and (c) No. On the contrary, all regulation of *internal* recruiting should in course of time be unnecessary. Employment in a territory under a different administration will probably have to be regulated by international agreement whatever improvements are made in labour conditions.

#### IRAQ

40. To all points raised in this question, the Government answers in the affirmative and supports all measures of social reform which have as their aim the gradual abolition of obtaining labour in any manner other than on a purely voluntary basis.

#### ITALY

40. The Government considers it desirable to adopt a Recommendation concerning the progressive elimination of recruiting by the methods referred to in (a), (b) and (c) of this question. The Government observes that, so far as Italy is concerned, it has already taken the first step in giving effect to this Recommendation by setting up public employment exchanges for Native labour in Somaliland.

#### NETHERLANDS

40. (a) Yes; although, generally speaking, it is still the rule with the Javanese not to offer themselves, without substantial reasons, for work outside the country of their birth (Java), there is, nevertheless, ground for the belief that an improvement in the conditions of work and in wages would have a certain influence on the supply of labour. The Javanese people generally would, however, rather put up with a lower standard of living in their own country (Java) than go elsewhere to work as wage earners (see also the reply to Question 6 (b)). Settlement is a different matter, as the landless can get a bit of land of their own outside Java. The aim then is, however, to settle down as cultivators in the new place.

(b) Yes, there are already adequate means of communication between Java and the Outer Provinces. The situation in the country, which is spread over the widely scattered islands of the Archipelago, is, however, such that travelling expenses are too high for the workers to bear these themselves — which hinders spontaneous emigration — except in the case of those going to the nearer districts of Lampong and to Bali.

The observations made under (a) are also applicable to a less extent to emigration to the districts of Lampong (South Sumatra) for Javanese settlement there is growing; therefore the Javanese



worker feels rather at home there. In other words, Javanese settlement in the Outer Provinces on a bigger scale, rather than the criteria mentioned under (a) and (b), will act as a stimulant to the supply of labour.

(c) Yes, the Government of the Netherlands Indies has always been in favour of the encouragement of spontaneous emigration by *laukeh* recruiting and by the *Eigen-werving* organisations as well as by the public employment exchanges (*Jokjakarta*), in which propagandists are employed. As, however, travelling and transport expenses cannot be borne by the emigrants themselves, it remains to be considered whether this kind of emigration, which cannot take place without the help of prospective employers who subject it to certain conditions, will not generally come within the definition of "recruiting".

#### SPAIN

40. (a) and (b) The reply is in the affirmative.

(c) The Government does not consider this proposal acceptable, since in its view it might be a means of preventing a worker from betaking himself to places where the conditions of work are more favourable.

#### UNION OF SOUTH AFRICA

40. (a) and (b) The replies are in the affirmative.

(c) A Government Labour Exchange under the charge of a Government Officer is not favoured.

#### YUGOSLAVIA

40. The reply is in the affirmative.

#### FACILITIES TO BE GRANTED TO RECRUITED WORKERS AND THEIR FAMILIES

41. Do you consider it desirable that the International Labour Conference should adopt a Recommendation concerning the granting of various facilities to recruited workers and their families, such facilities to take the form of :

(a) the provision of land (preferably Government land) for settlement where the policy of the Government is to establish a working population in the areas of employment ;

(b) the right of recruited workers to acquire immovable property ;

(c) the provision of land for the cultivation of food supplies, even where workers accompanied by their families are intended to remain in the area of employment only for the duration of the employment ;

(d) the provision of schooling facilities where workers are accompanied by their families ?

BELGIUM

41. The reply is in the affirmative.

BULGARIA

41. (a), (b), (c) and (d) The reply is in the affirmative.

CHILE

41. (a), (b), (c) and (d) The reply is in the affirmative.

CHINA

41. The reply is in the affirmative.

FRANCE

41. The reply is in the affirmative.

GREAT BRITAIN

41. The Government would see no objection to the adoption by the Conference of a Recommendation on the lines suggested in this Question, but they consider it desirable to record that, owing to the great variety of local circumstances in their dependencies in various parts of the world, they would be unable to accept it for universal application throughout those dependencies.

INDIA

41. (a), (b), (c) and (d) Such a recommendation would be desirable provided that it is recognised that its adoption in whole or in part must depend upon the circumstances of each case.

IRAQ

41. The answer is in the affirmative and in this connection the Government invites reference to its remarks under Question 40 above.

## ITALY

41. The Government also considers it desirable to adopt a Recommendation concerning the granting to recruited workers and their families of the facilities proposed in clauses (b), (c) and (d) of this question. As regards facilities to acquire rights of property in land (a), the Government considers that it is not desirable to provide for the granting of facilities to recruited workers to acquire rights of property in land, as such a provision might be incompatible with the Native system of land tenure in certain colonies. This reservation might be expressed by the formula: "in so far as may be compatible with the system of land tenure".

## NETHERLANDS

41. (a) Yes, the Government of the Netherlands Indies has already moved in this direction, but only in respect of recruited labour and only the settlement of the workers on the estates. Workers whose contract of engagement has expired and who desire to settle down in the province should be considered in connection with settlement in the vicinity of the undertakings.

(b) Yes, if property situated outside the lands of an undertaking is in question. Provisions relating to the autonomous territories giving workers perpetual right over houses and gardens situated on the undertakings had to be withdrawn, as they had never worked and were injurious to settlement. The undertakings are not disposed to concede rights to land to workers who do not work for the undertakings in return; in cases where rights to land belonging to an undertaking have been conceded, if the contract of engagement has expired, the worker cannot be compelled to continue to work for the undertaking.

(c) Yes, this is always urged so far as labour belonging to an undertaking is concerned. In certain provinces, there is far too little uncultivated land belonging to the undertakings for it to be left to be occupied by the workers after the contract of employment has expired. These workers, however, are taken into consideration in respect of the settlement of land situated in the neighbourhood of the undertakings, which is referred to under (a). Moreover, in certain provinces, as for example on the important agricultural lands on the east coast of Sumatra, the undertakings are situated so near each other that often there is not much room for settlement in the neighbourhood.

(d) The reply is in the affirmative; the question of workers' education has been under consideration for years. When there is no school in the vicinity of an undertaking and the number of children of school-going age requires one, the opening of schools by undertakings is urgently recommended.

## SPAIN

41. It would be desirable that the Conference should adopt a Recommendation to this effect; it would also be well, if considered necessary, to include the basic principle in the text of the Draft Convention.

## UNION OF SOUTH AFRICA

41. The policy of the Union Government is not to encourage the permanent settlement of recruited labour in industrial areas. On the contrary, the Government anticipates that such labour will return to the Native reserves upon completion of the period of employment. The provision of land for, or the right to acquire immovable property by, recruited workers in the manner envisaged by paragraphs (a), (b) or (c) would not accord with this policy. Even when recruited labour is employed in rural areas, as such areas would not fall in areas set aside for Native occupation, the proposals would not be acceptable.

## YUGOSLAVIA

41. The reply is in the affirmative.

## CHAPTER II

### GENERAL SURVEY OF THE QUESTION IN THE LIGHT OF THE REPLIES OF THE GOVERNMENTS

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The special systems of recruiting workers, the question of the regulation of which is before the Twentieth Session of the Conference, are systems operated for obtaining what is commonly known as "Native labour", i.e. the labour of persons belonging to indigenous peoples inhabiting territories under the administration of non-indigenous races, irrespective of whether these territories are dependencies of Member States or are themselves Member States or other fully self-governing countries.

The replies of the Governments may be roughly classified according to the direct interest of the various States in this question. Generally speaking, complete and detailed replies have been received only from States whose territories comprise regions inhabited by dependent indigenous peoples among whom labour is recruited by the methods it is proposed to regulate. A few States, whose practical interest in the subject may be described as "marginal", have also replied to the Questionnaire question by question; and one or two States which have no direct interest in the question have shown their sympathy with the object of the proposed regulations by indicating their views on each of the points of the Questionnaire. In other cases, States not directly concerned have confined their replies to an expression of general approval of the proposed regulations or to an explanation of their reasons for abstaining from replying in detail to the Questionnaire.

The views expressed in all the replies on the desirability of adopting a Draft Convention providing for the regulation of recruiting are summarised below in connection with the first question. As regards the other questions, mention is also made of the replies that have dealt with the Questionnaire point by point; but it has seemed to the International Labour Office that the most satisfactory method is to give special weight to the replies of the Member States most directly concerned and to take also into account the degree to which the several States would be affected by the acceptance of the proposed regulations.

## The Regulation of Certain Special Systems of Recruiting Workers

### I. — FORM OF THE INTERNATIONAL REGULATIONS

#### Question 1 (Replies on pp. 7 to 12)

The following States returned an unqualified affirmative to the question whether they considered desirable the adoption of a Draft Convention providing for the regulation of certain special systems of recruiting : Belgium, Bulgaria, Chile, China, Great Britain, Italy, Netherlands, Spain, South Africa, Yugoslavia.

The French Government also replies affirmatively and without qualification as regards the desirability of adopting a Draft Convention, but considers that it would be advisable to revert to the original description of the purpose of the Convention, i.e. "the recruiting of labour in colonies and in other territories with analogous labour conditions". The Government also prefaces its replies with the general observation that it would be best to embody only general provisions in the proposed Draft Convention, leaving the methods of application to a very large extent to the national and local laws and regulations.

The Government of 'Iraq supports the proposal for the adoption of a Draft Convention, considering that, where recruiting exists, it should be controlled by legislation. In 'Iraq, however, the reply states that the practice of recruiting is non-existent, except in extreme cases of national emergency for public purposes.

The Government of Japan is in principle in favour of the proposed international regulations, but states that the present situation of Japan makes an immediate acceptance of the provisions of these regulations impossible. For this reason, the Government abstains from replying to the Questionnaire point by point.

The principle of the adoption of international regulations is also supported by the following States, which, however, abstain from replying in detail to the Questionnaire as the proposed regulations would have for them no practical application : Brazil, Estonia, Irish Free State, Norway, Switzerland, United States of America.

The replies of the following States declare that the Governments have abstained from replying to the Questionnaire in detail as the question is of no direct concern to them : Austria, Denmark, Finland, Hungary.

The reply of the New Zealand Government is in another category. It is confined to a description of the situation in New Zealand territories, in which it is stated that there is no recruiting within the meaning of the definition suggested in Question 2, Chinese labour for the Mandated Territory of

Western Samoa being recruited in Hong Kong under the supervision of the Hong Kong Government. Moreover, all arrangements for the recruiting, transport, employment and repatriation of Chinese labour for Western Samoa are made directly by the Administration of the Mandated Territory. The Government considers, therefore, that the proposed regulations could have no other possible application to New Zealand or to Western Samoa and that no useful purpose would be served by answering the Questionnaire point by point. No opinion is expressed regarding the desirability or otherwise of adopting international regulations.

Finally, reference must be made to the reply of the Government of India. The Government of India sees no objection to the adoption of a Draft Convention, provided that it deals only with the regulation of the recruiting of workers for employment outside their country. The Government is opposed to the regulation of recruiting in India for employment within the country, except in so far as it is rendered necessary by the existence of abuses and serious dangers. Legislative and other measures designed to check abuses where they occurred have been taken in the past, but the ideal constantly kept in view is that of free recruitment within India itself and the progressive elimination of restrictions. The Government is, therefore, not satisfied that the control of recruiting within the territory of employment is a suitable subject for international regulation.

The above summary of the replies to Question 1 shows that the majority of the Governments whose replies have been received are in favour of the adoption of a Draft Convention concerning the regulation of certain special systems of recruiting workers. One Government is in favour of a Draft Convention, but would prefer to describe it by the title of the question on the 1935 Agenda. Another Government would have no objection to a Draft Convention for the regulation of recruiting for employment outside the territory of recruitment. Five Governments have not expressed an opinion on the desirability or otherwise of adopting a Draft Convention.

Only two questions arising out of the replies have to be considered : (1) the question of the title, raised by the French Government ; (2) the question of the limitation of the proposed regulations to recruiting for employment in another country, raised by the Government of India.

The first of these questions can most usefully be considered in connection with the replies to the next point of the Questionnaire, which is concerned with the proposed definition of recruiting. It will be necessary, in reviewing the replies to Question 2, to examine again the whole problem of defining the scope of the proposed Draft Convention, and it would seem to be appropriate to discuss, in the course of that examination, whether the French Government's proposal is the most satisfactory method of solving the problem.

As regards the second point, it may be noted that the opinion expressed by the Government of India would appear to be based upon the existence in India of circumstances and an evolution of policy which differ considerably from the position in most other territories in which active recruiting of labour is practised. Among the circumstances to which it would not, perhaps, be irrelevant to refer are the political and industrial developments which have made India a State Member of the International Labour Organisation and one of the eight States of chief industrial importance. Of more immediate importance in the determination of the trend of policy in regard to the regulation of recruiting is, however, the fact that long contracts and penal sanctions have long been abolished in India. There has never been any general regulation of recruiting in this country, and the conclusions reached by the Royal Commission on Labour in India, after examining the system of regulating recruiting for the Assam tea gardens, were that it would be advisable to decontrol recruiting also in this case and to base legislation on the policy of free recruitment. In view of the abolition of long contracts and penal sanctions, it was apparently considered sufficient to rely normally on provisions for the repatriation of workers at the expense of the employer to prevent abuses in connection with recruiting; to deal with the abnormal event of the occurrence of abuses or other serious dangers in the recruiting areas it was sufficient to make provision for exceptional measures of control. These conclusions were accepted by the Government of India and embodied in the legislation now in force.

The situation in most other territories in which active recruiting is practised is very different. Leaving aside considerations concerning the political status and the economic and social development of the peoples among whom labour is recruited, it may be observed that a large proportion of the workers obtained by recruiting are employed under more or less long-term contracts, with or without penal sanctions. Moreover, the trend of development of policy—at least as foreshadowed by the Committee of Experts on Native Labour—is not towards the decontrol of recruiting, but towards its more efficient regulation with, as objective, the elimination of recruiting and its replacement by institutions for facilitating the free movement of labour—a very different thing from free or unregulated recruiting.

The Government of India's reasons for rejecting the regulation of recruiting for employment within India itself would not, therefore, appear to have general validity. Nor is it obvious why recruiting for employment abroad should be regulated, while internal recruiting remains entirely uncontrolled. Indeed, the replies of the Government of India to subsequent questions show that the Government equally rejects most of the suggested provisions for the regulation of recruiting in the case of migrant



workers and that a Draft Convention to which it would have no objection would not be so much a Convention providing for the regulation of recruiting as a Convention for the protection of migrant workers.

The conclusion to this survey of the replies to Question 1, therefore, is that the International Labour Office should prepare and place before the Conference a proposed Draft Convention providing for the regulation of certain special systems of recruiting workers, whether these systems are operated for obtaining labour for employment within or without the country of recruitment.

## II. SCOPE OF THE INTERNATIONAL REGULATIONS

Questions 2, 3 and 4 (Replies on pp. 12 to 19)

### *Definition of Recruiting (Question 2)*

The definition of recruiting on which the Governments were consulted is as follows: "Any operation or operations undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services either at the place of employment or at a public emigration or employment office or at an office of an employers' organisation under public supervision."

This definition is approved without qualification by the following States: Belgium, Bulgaria, Chile, China, France, Iraq, Netherlands, Spain, South Africa, Yugoslavia.

The Government of Italy also accepts the definition, but proposes a slight drafting modification to which there would not appear to be any objection, i.e. the replacing of the words "under public supervision" by the words "under the supervision of the competent authorities".

The Government of India, in accordance with its general attitude as explained above under Question 1, considers that the definition is extraordinarily wide and would cover operations which are entirely innocuous. It recognises, however, that a narrow definition might be unsuitable, and suggests that the proposed definition should be tempered by a general power of exemption. Further reference will be made to this suggestion below.

The reply of the British Government raises a question of considerable difficulty and importance. While agreeing that the proposed definition is suitable "as regards the kinds of recruiting operations which it is intended shall be regulated in accordance with the provisions of the proposed Convention", the British Government observes that "the definition would not exclude the operations of certain employment agencies in the United Kingdom to which His Majesty's Government could not agree to apply the provisions of the Convention.

Some of these agencies are run as private enterprises, some by philanthropic organisations, while others are conducted by various organisations of employers or workers (but not under public supervision)." Further, the British reply points out that, as a result of the change in the title of the question on the agenda, "there is now nothing to indicate the kinds of territories in which it is intended that the provisions of the Convention should be applied. Ratification by His Majesty's Government would therefore constitute an undertaking to apply the provisions of the Convention in the United Kingdom."

The British Government does not propose an amendment to the definition of recruiting, not having found it possible to devise an amendment "which would exclude operations which should properly fall outside its scope, without, at the same time, unduly restricting the field in which the provisions of the Convention ought to be applied". The Government considers that "the only practicable solution of the difficulty would be to insert in the Convention a provision in such terms as would enable them (the Government) to declare, at the time of ratification, that they do not intend to apply the provisions of the Convention in the United Kingdom or in any other of their territories in which there are no recruiting operations of the special kinds to which the Convention is intended to apply". This provision, the Government suggests, should be placed in the first paragraph of the Article suggested in Question 39, which relates to the question of the application of the proposed Draft Convention in the territories referred to in Article 35 (421) of the Constitution of the International Labour Organisation.

In reality, the British Government's reply raises again the whole question of defining the field of application of the proposed Draft Convention. While it would be theoretically possible to meet the specific difficulty mentioned above by amending the definition of recruiting so as to exclude any possibility of the definition covering the types of agency in the United Kingdom to which the reply refers, this could only be done, as the British Government states, by unduly restricting the field in which the provisions of the Convention ought to be applied. This being so, it would obviously be a bad method to sacrifice provisions of value to the territories for which the Convention was devised, in order to make it theoretically applicable in territories where application was never intended. Moreover, a reference to the British Government's reply to Question 39 will show that there is another aspect of the difficulty. The British Government interprets the assumption of an obligation to apply a Convention in a territory as involving an obligation to take legislative or other measures dealing with the subject-matter of the Convention, even if such measures would have no practical application. It seems, therefore, to be essential so to draft the Convention on recruiting that its

ratification would not involve an obligation to "apply" it in territories in which there is no recruiting. Hence it is the whole problem of defining the field of application of the proposed Draft Convention that must be considered.

The problem of the scope of application has been anxiously considered by the International Labour Office from the outset of the study of the regulation of recruiting. The first solution proposed was the title of the question placed on the agenda of the 1935 Conference: "the recruiting of labour in colonies and in other territories with analogous labour conditions". However, as was explained in the report of the Committee of the 1935 Conference, strong exception was taken to this title on the ground that it failed to express exactly the purpose of the proposed regulations and that it would be impossible, without establishing arbitrary distinctions, to determine which were the territories with conditions of labour analogous to those of colonies. A new drafting of the title was, therefore, proposed for the item on the agenda of the 1936 Conference; as adopted, after amendment, by the Conference the title refers only to the regulation of "certain special systems of recruiting workers".

Nevertheless, it was not anticipated at the 1935 Conference that there would be any doubts regarding the field of application of a Draft Convention based on the proposals of the Questionnaire. As was explained in the report of the Conference Committee, the title "laid the emphasis on the methods of recruiting, the regulation of which was the object of the proposed international measure, leaving the scope of application of the suggested Draft Convention to be deduced from the definition of recruiting contained in the Convention". Moreover, it was thought that the obvious inapplicability in other situations of provisions which had been prepared on the exclusive basis of a study of Native labour recruiting, would suffice, together with the title and the definition, to remove all doubts regarding the field in which the proposed Draft Convention was intended to apply.

In view, however, of the British Government's interpretation of the scope of a Draft Convention based on the Questionnaire, it seems essential that a solution should be found which will make it clear beyond all doubt that, in ratifying the Convention, States Members would only be assuming an obligation to apply its provisions in the circumstances in which it is intended that the Convention should be applicable. The replies of the Governments offer three suggestions for dealing with this problem.

The first suggestion is that of the French Government, mentioned above under Question 1, that the proposed Draft Convention should be given the title of the question on the agenda of the 1935 Conference, which seems to the Government to describe the purposes of the Convention better than the new title. The adoption of this suggestion, however, would

mean that the situation would be exactly as it was at the opening of the 1935 Conference, and the objections which were then made to the title would again arise. Tested, therefore, by the criterion whether, by reverting to the title first proposed, the scope of the Draft Convention would be so delimited as not to leave room for doubt or discussion, it must be admitted that the suggestion does not solve the problem.

The second suggestion to be found in the replies is the Government of India's proposal that a general power of exemption, "subject perhaps to a report to the International Labour Office", should be inserted in the Draft Convention. As the Office understands this suggestion, it would mean that a State ratifying the Convention would be empowered to exempt any of its territories or parts of its territories from the application of any or all of the provisions of the Convention; the decisions taken would presumably be declared either at the time of ratification or subsequently in the annual reports.

The adoption of a provision of this kind would obviously offer serious advantages. In virtue of such a provision, it would be possible for a State to exempt from the application of the Convention its metropolitan territories, as desired by the British Government, or to apply the Convention within its metropolitan territories with such modifications as it might consider desirable. Special attention may be directed to this latter aspect of the question. Under Article 35 (421) of the Constitution, Member States are given the possibility of exercising a power of exemption in respect of their non-self-governing territories when owing to local conditions a Convention is inapplicable, or of applying a Convention in such territories with such modifications as may be necessary to adapt the Convention to local conditions. No such possibility exists in respect of the home territories of States, although, in the case of questions such as the one under discussion in this Report, the local conditions within the territories of some States may be analogous to those of colonies. A power of total exemption is, of course, unnecessary in such cases, because, if a Convention were considered entirely inapplicable in their territories, these States would obviously refrain from ratification. But the absence of a possibility for States to make modifications adapting the provisions of a Convention to local conditions in their home territories constitutes a serious difficulty in drafting a Convention of the kind now in contemplation.

On the other hand, the Conference may well hesitate to adopt a solution so far-reaching in its possible effects, both in the application of the proposed Draft Convention on recruiting and as a precedent. There is no reason whatever to suppose that the power of exemption would not be used in all good faith, but it may be considered a dangerous principle to leave the door open for a too elastic application. Moreover, the Conference may prefer, to this negative method of exemption,

a method of a more positive kind, which would consist in endeavouring to establish an effective equality as regards application in the dependent territories covered by Article 35 (421) and in the home territories of States where active recruiting exists, by so drafting the Convention that the need for recourse to Article 35 (421) would be reduced to the minimum. An essential condition of the use of this method would, of course, be a satisfactory definition of the field of application of the proposed regulations.

The suggestion of the British Government is in effect that States should be empowered, at the time of ratification, to declare that their ratification does not cover certain of their territories or parts of their territories. The suggestion may thus be considered to be a limited variation of the proposal examined above. It would probably be held to be open to less objection, particularly if it were specified that the provision related only to colonial States ratifying the Convention in respect of their dependent territories. Nevertheless, for the reasons given above, the International Labour Office suggests that the Conference may prefer a solution which consists in the delimitation of the field of application of the Draft Convention by an appropriate definition.

It was indicated above that a satisfactory solution could only be one which would leave no room for doubt or discussion that, in ratifying the Draft Convention, States Members would only be assuming an obligation to apply its provisions in the circumstances in which it is intended that the Convention should be applicable. As to what those circumstances are, there can be no question. The problem of the regulation of recruiting which is now before the Conference has been studied only as a problem of Native labour, and it was neither the intention of the Governing Body of the International Labour Office in placing the original question on the agenda of the 1935 Conference nor that of the 1935 Conference in placing the question, howbeit with an amended title, on the agenda of the 1936 Conference, that the subject should be extended to include the recruiting of any other class of labour. The solution must, therefore, provide a definition of the labour to which it has always been intended that the proposed Draft Convention should apply—a definition which will avoid as far as possible both imprecisions and expressions to which objection might be taken.

At the beginning of the present chapter, "Native labour" was described as the labour of persons belonging to indigenous peoples inhabiting territories under the administration of non-indigenous races, irrespective of whether these territories are dependencies of Member States or are themselves Member States or other fully self-governing countries; to make this description complete it is necessary to add that the term also includes the labour of migrants assimilated to indigenous

inhabitants. If this description is accurate, the characteristic of "Native labour" is that it is the labour of persons belonging to dependent indigenous peoples, or persons assimilated thereto. It seems to the International Labour Office that a definition based upon this conception might be the most satisfactory solution of the problem of delimiting the field of application of the proposed Draft Convention. To test the opinion of the Conference, provisions embodying this idea will be included in the text at the end of this Report; their purport will be explained in more detail in Chapter III.

*Exceptions to the Definition of Recruiting (Questions 3 and 4)*

The first of these questions was designed to ascertain whether the Governments considered that the competent authorities should be empowered to exempt recruiting operations by employers who employ only a limited number of workers, as well as operations carried out by employers within a specified radius from the place of employment, and, if so, whether the precise limitations should be left to the national law or regulations or prescribed in the Draft Convention. The second question asked whether the competent authorities should be empowered to exempt recruiting from regulation in any other cases.

With the exception of the Government of Iraq, all the Governments which have sent detailed replies have answered Question 3 in the affirmative, subject to various observations. The following States consider that the limitations of the proposed exceptions should be left to the national law and regulations: Belgium, Chile, India, South Africa, Yugoslavia. The Government of France is of opinion that the exceptions might be prescribed in the Draft Convention or left to the discretion of the competent authorities, but that in any case the precise limitations should be left to the national law and regulations. On the other hand, the Government of China considers that the precise limitations should be prescribed in the Draft Convention. So do the Governments of Great Britain and Spain: the former suggesting that the Convention should provide an exemption for recruiting operations on behalf of employers who do not employ more than twenty workers (excluding personal and domestic servants), and that the competent authorities should be empowered to exempt recruiting operations undertaken by employers, their messengers or agents, within a radius of thirty miles from the place of employment; the latter suggesting that the Convention should fix the number of workers at fifty and the radius from the place of employment at eighty kilometres. The Government of Italy considers that it should be open to the competent authorities to prescribe the necessary exceptions; the proposed exception concerning the recruiting of only a limited number of workers is acceptable, but it is considered that it would be impossible strictly to define a "specified radius" from the place of employment within

which alone this exception would apply. To the Government of the Netherlands the proposed exceptions do not appear to correspond to local conditions in the Netherlands Indies, and a different proposal is made in the reply to Question 4.

Negative replies to Question 4 are returned by Belgium, Bulgaria, Chile, China, Iraq, Yugoslavia; no specific reply is made by France. The Government of Spain thinks that, if it is necessary to deal with other cases, a general power of exemption should be inserted in the Draft Convention. The Government of India, as was stated above under Question 2, also considers that there should be a general power of exemption. Italy proposes to exclude the recruiting of a limited number of workers by worker-recruiters. Great Britain considers it necessary to exclude from the regulation of recruiting "any operation leading to the engagement of personal or domestic servants or of non-manual workers" and "any operation leading to the engagement of labourers for work of a purely casual nature". Having regard to the situation in the Netherlands Indies, the Netherlands Government proposes that it should be left to national law to determine the territories to which the international regulations should be applicable. Finally, the South African Government proposes that recruiting for employment by Government should be exempted.

The balance of opinion is thus in favour of leaving to the States the decision whether exceptions should be made for recruiting operations carried out by employers who employ only a limited number of workers and operations carried out by employers within a limited radius from the place of employment. The result is the same as regards the determination of the precise limitations; moreover, the only suggestions made in respect of the limitations that might be inserted in the Draft Convention differ so widely that it would be difficult for the International Labour Office to draw any conclusion from them. On the other hand, the observations made by the Italian Government on the difficulty of accepting the term "specified radius" do not appear to justify the abandonment of this idea. Apart from the consideration that the Italian reply seems to be dealing with the varying distances from the place of employment within which workers are in the habit of moving spontaneously in search of employment—movements which do not come within the definition of recruiting—it should be observed that if the determination of the "specified radius" is left to the competent authorities, the radius may be different in different areas and may be adapted to local conditions.

As regards the various proposals made in reply to Question 4, the widest is that relating to the insertion of a provision for a general power of exemption. This proposal was considered above as a possible solution to the problem of the scope of the Convention, and it was suggested that the Conference would

hesitate to adopt it because it would theoretically open the door to evasions of the obligations assumed by ratification and would thus perhaps create a dangerous precedent. If these objections are valid, it would seem that this proposal should not be retained. Moreover, the Spanish Government would not appear to attach importance to this proposal, which it only makes incidentally, while the general views of the Government of India regarding the suitability of a Draft Convention such as the one in contemplation for application in India would no doubt be met by the delimitation of the scope of application proposed by the Office.

The British Government's proposal for an exception in the case of personal or domestic servants could perhaps be adopted in a form analogous to that relating to a limited number of workers.

The proposal regarding an exception for non-manual workers also seems acceptable as the intention of the proposed regulations is evidently to cover manual workers.

The further proposal of the British Government that an exception should be made in the case of recruiting "for work of a purely casual nature" seems to give rise to considerable difficulty. What is "work of a purely casual nature"? Is it any employment not under contract, or day-to-day employment, or intermittent employment? In the absence of a precise definition of "casual", the Office could hardly accept the responsibility of recommending the adoption of a proposal which would possibly exempt a considerable amount of recruiting from the scope of application of the Draft Convention. It is also not easy to grasp why the recruiting of casual labour—in so far as it could not be excepted under other provisions—should not be regulated in the same way as the recruiting of labour for regular employment.

The Italian proposal for an exception in the case of the recruiting of a limited number of workers by worker-recruiters raises a question which is also raised incidentally by the British reply concerning the radius. The Questionnaire mentioned only recruiting operations undertaken by employers; the proposals of the two Governments would have the effect of amending this provision to include recruiting operations undertaken on behalf of employers by their agents or by worker-recruiters. To give the Conference an opportunity of expressing an opinion on this question, a provision covering the point will be inserted in the text of the proposed Draft Convention.

The reply of the Netherlands Government to Question 4 makes a proposal based on conditions and practice in the Netherlands Indies, where recruiting is only regulated when it is undertaken in Java and Madura for employment under penal sanction contracts in another province. The Government is prepared to extend the regulation of recruiting to include labour which is not employed under penal sanction



contracts, but would like to see a provision inserted in the Draft Convention leaving it to the national law and regulations to determine the territories in which recruiting should be regulated. It may be observed that this exception would be very wide and, although it would apparently affect only a small amount of recruiting in the Netherlands Indies, it might, if generalised, very largely frustrate the intentions of the Draft Convention in other territories. The Conference would, therefore, probably hesitate to accept so wide an exception. Moreover, the Netherlands Government's reply itself suggests that the situations it has in view would be largely excluded from the field of application of the Draft Convention either by the definition or by the exceptions to the definition foreshadowed in the Questionnaire. It would appear, therefore, that it would be preferable not to make provision for the proposed exception in the Convention, but to leave it to the Netherlands Government to make the necessary adaptations in virtue of Article 35 (421) of the Constitution, in so far as such adaptations could not be made under other exceptions.

Finally, the South African Government considers it necessary to specify that the Draft Convention is not intended to apply to the recruiting of labour for employment by Government. This is a new point which it will be for the Conference to decide; it would seem to have been assumed during the preparatory work that such provisions as are relevant would apply equally to recruiting for employment by administrations.

### III. — GENERAL REGULATION OF RECRUITING

Questions 5 to 11 (Replies on pp. 19 to 26)

#### *Economic Development and Recruiting (Question 5)*

In this question the Governments were asked whether they considered that, when examining the policy to be adopted for the economic development of an area and this policy is likely to involve the recruitment of labour, the competent authorities should take whatever steps might be necessary and practicable to avoid the risk of undue pressure to furnish labour, to avoid dangers to social organisation, and to deal with any other consequences of such economic development.

With one exception, all the replies to this question are in the affirmative. The exception is the reply of the Government of India, which, without expressing any opinion on the substance of Questions 5 to 11, states that the questions are in the main inapplicable to India and refers to the observations made in the reply to Question 1. An important qualification is contained in the reply of the Government of Great Britain, which, while agreeing with the principles underlying the question, considers that it would not be possible to formulate any provisions,

based on these principles, in sufficiently precise terms to be suitable for inclusion in a Draft Convention. The British Government consequently proposes that the principles should be embodied in a Recommendation.

The difficulty of formulating precise and detailed obligations on the basis of the principles underlying this and some of the following questions in this section of the Questionnaire had not escaped the notice of the International Labour Office, and it would not have been surprised had the proposal to embody these principles in a Recommendation been contained in the replies of other Governments. That the other Governments should have expressed themselves in favour of including provisions containing these ideas in the Draft Convention is no doubt evidence of the importance they attach to them. It is probably also due in some cases to a difference of conception regarding the character of the provisions which should be included in a Convention. For whereas the British Government has always shown its preference for precise obligations which leave little or no room for national interpretation, other Governments consider that Conventions should lay down general principles, leaving the details of application to national law and regulations. As was noted above under Question 1, this conception was expressed by the French Government in a prefatory remark to all its replies to the Questionnaire on recruiting.

Most International Labour Conventions represent a compromise between these varying conceptions, and the Draft Convention under consideration must no doubt be drafted in the same spirit. It is only possible for the Office to conclude from the replies that the provisions suggested in Question 5 should be included in the proposed text of the Draft Convention, and should be drafted so as to avoid as far as possible both rigidity and imprecisions.

#### *Effects of Recruiting on Social Life (Questions 6 and 7)*

The replies to Question 6, which suggested that the competent authorities, before granting permission to recruit labour in any given area, should examine the possible effects of the withdrawal of adult males on the social life of the populations concerned, are also in the affirmative, subject to the same exception and qualification as the replies to Question 5, and the conclusion to be drawn from them would appear to be the same.

In replying to the question whether any other factors should be taken into account by the competent authorities before granting permission to recruit labour in any given area, the Governments of the following countries make various suggestions: Chile, Great Britain, Iraq, the Netherlands, Spain, South Africa.

The Government of Chile considers that consideration should be given to the aptitude of the worker for the proposed employment, to the question of measures of immunisation against various diseases, and to guarantees that the employer would fulfil his obligations under the contract. It may be observed that the questions of aptitude and immunisation are dealt with later in connection with the requirements of medical examination of recruited workers, while that of guarantees respecting the fulfilment of contracts would more appropriately come up for consideration when Native labour contracts are before the Conference.

The British Government suggests that consideration should be given to the possible effects on the welfare of the inhabitants in the area in which the recruited workers are to be employed and instances the prohibition or restriction of recruiting to prevent the spread of sleeping sickness. This suggestion seems, however, to belong to a different order of measures from those contemplated in Question 6, which have in view the safeguarding of the communities from which the recruited workers are drawn; while it is no doubt a factor which all administrations would take into account, it is questionable whether it would be in place in regulations having as their object the welfare of recruited workers and the peoples among whom they are recruited. On the other hand, it would seem desirable to add to the points mentioned in Question 6 a reference to the safeguarding of the health of the communities concerned, as suggested by the Government of Iraq.

The Government of the Netherlands mentions the desirability of prohibiting the recruiting for employment under penal sanction contracts of minors and of married women save with the consent of their husbands, and of guaranteeing that married recruits should be able to live together if they so desire. It seems to the Office that the first two points could best be considered when the problems of Native labour contracts are dealt with by the Conference. As to the question of married recruits, it appears to be sufficiently covered by the provision suggested in Question 10.

The reply of the Spanish Government considers that the competent authorities should have regard to all factors that might require the taking of measures to avoid social injury. This point would seem to be covered by the formula at the beginning of Question 6.

The South African reply states that local requirements should be considered before permission to recruit for outside interests is permitted. Whatever the merits of this proposal, it seems to the Office to be outside the scope of the provisions suggested in Question 6, which are concerned only with the welfare of the communities in which it is proposed to recruit labour, whether for local requirements or for employment at a distance.

*Percentage Restriction of Recruiting (Question 8)*

The Governments were asked in this question whether they considered that, where necessary, the number of men who might be recruited in any given community should be restricted so that the number of men remaining should not fall below a prescribed percentage of the normal proportion of men to women and children. An affirmative reply is given by the following States : Belgium, Bulgaria, Chile, China, the Netherlands, Spain, Yugoslavia. The replies of the Governments of France and Italy are also affirmative, provided that the details of the practical application of the principle are left to the competent authorities. The British Government agrees that the provision would be desirable, where necessary, but considers that it would be more suitable for incorporation in a Recommendation. The Government of 'Iraq thinks that the adoption of the provision should be optional. The Government of South Africa answers the question in the negative, as the need for action of the kind suggested has not yet presented itself in the Union.

Apart from the question whether this provision should be inserted in the Draft Convention or in a Recommendation—and on this point there seems nothing to add to the remarks on the replies to Question 5—these replies do not raise any new problems. It is evident that a provision drafted on the basis of Question 8 could only constitute an obligation on the competent authorities to take action when they themselves consider such action necessary, and that the details of any action in accordance with the principle of the provision would be left to the competent authorities.

*Families of Recruited Workers (Question 9)*

With two exceptions the replies are favourable to the idea that, if the circumstances make such a policy feasible and desirable, the competent authorities should encourage workers to be accompanied by their families. The French Government poses as a condition that the definition of "family" should be left to the competent authorities, as should the decision regarding the application of the provision. The British Government is in sympathy with the idea, but could not undertake to apply it generally, and considers that this provision also would be more suitable in a Recommendation. The Spanish Government considers that the provision could be applied in the case of agricultural or similar employment at a distance of more than fifty kilometres for a period exceeding two years. The Yugoslav Government thinks that in principle workers should be unaccompanied. The Government of South Africa also replies in the negative, as family migration tends towards detribalisation and temporary movements of this nature are not in accord with Native habit.

On the basis of these replies, the Office thinks that a provision corresponding to the question, and subject to the same reservations, should be inserted in the text it submits to the Conference.

### *Separation of Families* (Question 10)

Except for the reply of South Africa, all the replies are in favour of the provision suggested here. The Government of Italy considers that it should be permissible for the competent authorities to order the worker's family to return home, and the British Government would make the provision conditional on authorisation having been given for the workers to be accompanied by their families. The possibility of returning a worker's family to their homes does not seem to be placed in doubt by the proposed text, which deals only with the question of separation at the place of employment. The British Government's suggestion would appear to be the intention of the question, and the point can be made clear by a slight drafting change.

### *Ethnic Groups* (Question 11)

The replies to the question whether recruited workers should be grouped according to their ethnic affiliations in all appropriate cases are all affirmative. Several Governments condition their reply, however, by the remark that the principle should be applied when practicable, and the French Government considers that the decision and methods of application must be left to the competent authorities. These observations should no doubt be taken into account in the text to be proposed to the Conference.

## IV. — AGENCIES FOR RECRUITING

Questions 12 to 17 (Replies on pp. 26 to 35)

### *Recruiting by Public Officers* (Question 12)

In this question Governments were asked whether they considered that public officers should be prohibited from recruiting, either directly or indirectly, for private undertakings, except when the workers are to be employed on works of public utility. All the replies are favourable to this provision. Two Governments—those of Chile and Italy—remark that the prohibition should not prejudice the work of labour exchanges; this point is of course met by the definition of recruiting. The Italian Government also considers that the duty of public officers to inculcate the habit of work among indigenous peoples should not be affected; this opinion was expressed in the recommendations of the Committee of Experts on Native Labour, but as the proposed provision is not concerned with the positive duties of public officers, and seeks only to prevent them from

being used as recruiters, there seems no need to make an amendment in the sense of the Italian Government's observation. The reply of the British Government points out that recruiting by public officers, even for works of public utility carried out by private contractors, is not permitted in British dependencies. The Government of Spain considers that such recruiting should only be authorised when the work is incontestably of a public character.

### *Recruiting by Chiefs (Question 13)*

Most of the Governments reply in the affirmative to this question regarding the prohibition of recruiting by chiefs. The Government of Iraq does not consider that chiefs should be prohibited from acting as recruiting agents. The Italian Government observes that chiefs should continue to act as intermediaries between the Government and their people in regard to inculcating the habit of work; this function of indigenous authorities would not, however, seem to be called in question by the proposed provision. The Government of India states that the question is not applicable to India.

### *Professional Recruiting (Question 14)*

The Government of India observes, in regard to Questions 14 to 31, that the suggestions contained therein go beyond anything that is required in India even in respect of forms of recruitment still requiring control and that their general application in India would involve unwarrantable interference with methods of recruitment. All the other replies are in favour of the provision suggested in Question 14, that professional recruiting should be prohibited, except under licence and when the recruiter is acting for an administration or for specific employers or organisations of employers.

### *Recruiting by Employers (Question 15)*

The question relating to recruiting by employers is answered in the affirmative by all the Governments.

### *Recruiters' Assistants (Question 16)*

This question was in two parts, the first asking whether persons employed in a subordinate capacity by licensed recruiters should be required to be approved by a public officer and furnished with a permit by the licensee, the second asking whether such recruiters' assistants should be required to wear a distinguishing badge or uniform.

The replies to the first part of the question are favourable, except that the Spanish Government would prefer to leave the decision whether such measures are necessary to the competent authorities. The Netherlands Government does not express a definite opinion, but indicates that the suggested

provision is not at present applied in the Netherlands Indies and that various aspects of the problem have been referred to the supervisory committee on recruiting questions.

While a number of the replies to the second part of the question are in the affirmative, the Governments of Belgium, France, the Netherlands, Spain and South Africa are definitely opposed to a provision requiring recruiters' assistants to wear a badge or uniform. These Governments consider that the wearing of a badge or uniform confers on the wearer a semblance of authority and is liable to give rise to abuses. The British Government states that in some of its territories the wearing of uniforms or badges is customary and in some cases prescribed by law; the practice has not been found to lead to abuses. On the other hand, in other territories it is considered that the wearing of uniforms or badges would inevitably lead to the exercise by the wearers of dangerous authority over others. In these circumstances, the British Government could accept neither a provision requiring the wearing of such badges or uniforms nor a provision prohibiting the practice; the Government could agree to a provision stipulating that, where they are worn, their form should be subject to the approval of the competent authority.

On the basis of these replies, it seems to the International Labour Office that the text it submits to the Conference should contain a provision in the terms suggested in the first part of the question, but that the suggestion regarding the wearing of badges or uniforms should be omitted.

### *Recruiting by Workers (Question 17)*

The replies to this question concerning the conditions under which the recruiting of workers by worker-recruiters might be permitted are generally affirmative, the only wholly negative answer being that of the Government of South Africa, which does not favour the system "as it would probably lead to abuse". Various observations are made regarding the several conditions, which it will be convenient to examine separately; it may, however, be stated at once that no additional conditions are proposed in reply to the second part of the question.

The British Government prefaces its comments on the conditions to which recruiting by worker-recruiters should be subordinated by the statement that the provisions should only apply where workers are formally commissioned by their employers to procure the services of other workers in circumstances which give to their operations the definite character of recruiting. The reply points out that in various British dependencies employers have established what amounts to a personal connection with sources of labour through satisfied workers, who, when returning to the same employer, bring with them a number of their friends who require work. In the

view of the British Government it is unnecessary and unable to impose regulations on this system in territories where it is customary, and, as the concurrent existence of this practice and regulated worker-recruiting will make it very difficult in some cases to distinguish between the two systems, it will be necessary to allow administrative officers a very wide discretion in the enforcement of regulations.

As regards condition (a), that the worker-recruiters be manual workers employed by the undertaking for which they are commissioned to recruit, the British Government proposes the deletion of the word "manual", observing that there does not seem to be any reason why an employer should not utilise the services of a Native clerk or foreman. On this point it may be observed that the intention of the Committee of Experts on Native Labour in choosing the word "manual" was to indicate that the worker-recruiter should be a genuine or *bona-fide* worker employed by the undertaking and not a professional recruiter invested for the purpose with the qualities of an employee. If this object can be expressed in another way, then the intention of the Committee of Experts would equally well be met.

The same Government proposes an amendment to condition (b), under which worker-recruiters would be required to be in possession of a permit issued by the employer and countersigned by a public officer; the amendment is to replace "permit" by "letter of authority, or other equivalent document". Unless the British Government has some special reason for preferring these words, it would seem that it would be sufficient to speak of a "written authorisation". An addition to (b) is contained in the reply of the Netherlands Government, which does not consider it necessary that the permit should be counter-signed by a public officer. As it seems probable that this requirement would often give rise to administrative difficulties and as administrative supervision is provided for in condition (e), the Conference may feel that this point can be waived.

In regard to condition (c), the British Government remarks that it sees no reason to stipulate that the remuneration should not take the form of a capitation fee; but the wording of the question does not expressly exclude this form of remuneration. The Netherlands Government does not consider that this form of remuneration is desirable; ratification of a Convention containing a provision based on Question 1 would not, however, involve an obligation to introduce payment of worker-recruiters if the practice is considered undesirable by the Government concerned.

Proposals to widen the area of permitted recruiting referred to in (d) are made in both the British and Spanish Government replies. The former would permit worker-recruiters to operate within the area inhabited by their own tribe, while the latter



would stipulate that the area should increase in inverse ratio to the density of population, and that recruiting should be permitted only among members of the same tribe. Although these proposals would considerably widen the permitted recruiting area, the Conference may be disposed to meet these Governments by leaving greater latitude to the competent authorities in fixing the area.

## V. — RECRUITING LICENCES

Questions 18 to 20 (Replies on pp. 36 to 40)

### *Licensing Conditions* (Question 18)

The replies to this question are unanimously in favour of a licensing system.

There is also general agreement on requirement (a), that the licensee, if an individual, should be a fit and proper person.

In regard to (b), which suggested that every licensee should be required to deposit financial or other security for his proper conduct, the Governments were also asked to state their opinion on the desirability of imposing this condition in respect of each system of recruiting. The Belgian Government would impose the requirement in all cases, including that of worker-recruiters. The British Government considers that security should be deposited when the licensee is a professional recruiter, an agent of an employers' organisation, or an agent of an employer other than a person employed in the employer's own business; employers recruiting on their own behalf should not be required to furnish security, and the provision would not apply to worker-recruiters as there is no suggestion that they should be licensed. The Government of Iraq thinks that security should be required in all cases. The Netherlands Government remarks that security was required from professional recruiters before that form of recruiting was abolished in the Netherlands Indies; security is not required in regard to other systems of recruiting. The South African Government replies that it is desirable that security should be deposited by recruiter agents to meet any fines or forfeitures and by employer recruiters to meet any wages due as well as fines and forfeitures. The only question which seems to be left in doubt by these replies is whether employers recruiting on their own behalf should be required to deposit security, but as only one Government expresses an opinion in favour of excepting employers the Office thinks it necessary to leave the question open.

Requirement (c) as to the keeping of adequate records by licensees is generally approved.

The requirement suggested in (d) was that a licensee, if he is the agent of another licensee, should receive a fixed salary in preference to capitation fees. Most of the replies agree with

this suggestion. The British Government, however, considers that it would not in all cases be practicable to pay a fixed salary, as the amount of service rendered by the agent must necessarily vary, and it seems necessary to leave the remuneration to be determined in accordance with the amount of service rendered. The Government suggests, therefore, that where either the whole or part of the agent's remuneration takes the form of capitation fees, such fees should be subject to a prescribed maximum. It would seem possible to insert a provision to this effect in the text to be submitted to the Conference, more especially as the suggestion in the question was only that a system of payment by salary should be adopted in preference to payment by capitation fees, thus not excluding the latter form of payment.

In regard to (c), the British Government states that it does not consider that the responsibility of the licensee should begin until the recruited worker starts his journey. It seems to the Office to be difficult, in a provision of this kind, to determine the precise moment when the responsibility of the recruiter should begin. The text proposed in the question implicitly leaves this matter to the competent authorities, since it only requires that adequate provision shall have been made for safeguarding the health and welfare of the recruited workers from the time of recruiting. It must frequently occur that workers are detained for some time at collecting stations before commencing the journey to the place of work; in such cases, someone should be made responsible by the competent authorities for their welfare.

In reply to the second part of the question, i.e. whether any other conditions should be attached to the issue of recruiting licences, the Spanish Government suggests that the holder of a licence should be responsible for the due discharge of the obligations of his agent, and the South African Government proposes that it should be specified that if workers irregularly recruited are to be repatriated the expense should be borne by the recruiter. It is presumed that the first of these suggestions refers to the unlicensed subordinate agents who have been described as "recruiters' assistants"; the suggestion seems a valuable one, and will be inserted in the text to give the Conference an opportunity of expressing an opinion on it. The second proposal would seem to come more appropriately under Question 25.

### *Validity of Licences (Question 19)*

It is generally agreed that licences should be granted only for a fixed period to be prescribed by law or regulations. The British Government suggests that the maximum period should be twelve months, but in view of the other replies the Office feels that it should not propose any definite period.

*Renewal and Withdrawal of Licences (Question 20)*

This question is answered in the affirmative by all the Governments.

VI. — PROTECTION OF RECRUITED WORKERS

Questions 21 to 24 (Replies on pp. 40 to 47); Questions 25 to 29 (Replies on pp. 53 to 47); Questions 30 and 31 (Replies on pp. 53 to 56)

*Administrative Supervision (Question 21)*

The first part of this question asked whether Governments considered that recruited workers should be brought before a public officer for verification of the observance of the law and regulations, and the second part asked whether the presentation to this public officer should take place as near as possible to the place of recruiting. Governments were requested to answer the question separately for each system of recruiting.

To the first part of the question the replies are uniformly affirmative, but there is some divergent opinion on the second part. The British Government points out that in certain cases the application of the rule that recruited workers should be brought before the public officer nearest to the place of recruiting would involve unnecessary hardship to recruited workers. It is suggested, therefore, that the provision should be qualified by the condition that where undue hardship or inconvenience would be caused by bringing the recruited workers before the public officer nearest to the place of recruiting, they should be brought before a public officer at the most convenient place. The Government of the Netherlands gives a negative answer to the second part of the question, as the control of the public authorities in the Netherlands Indies takes place at the port of embarkation. Finally, the South African Government qualifies its approval by the words "as far as practicable". In these circumstances it seems necessary to give greater elasticity to the suggested provision.

The Governments which have expressed an opinion consider that the provision for administrative supervision should apply to all recruiting.

*Memorandum of Information (Question 22)*

While most of the replies agree that recruited workers not engaged at or near the place of recruiting should be furnished with a document setting out the conditions of the employment offered, etc., negative answers are given by the Governments of Italy, the Netherlands and South Africa, and the French Government expresses the opinion that the widest latitude should be left to the local authorities. In view of these replies, it appears necessary to modify the suggested provision so as to leave the issue and contents of such a document to the discretion of the competent authorities.

*Medical Examination (Question 23)*

In this question the Governments were asked whether they considered (a) that recruited workers should be medically examined as near as possible to the place of recruiting, (b) that a second examination should be required on arrival at or conveniently near the place of employment, and (c) that measures should be taken for the acclimatisation and adaptation of recruited workers.

(a) It is generally agreed that one medical examination is necessary, although the reply of the Government of South Africa is qualified by the statement that such examination "is considered desirable in most cases and compulsory where the nature of the employment requires first-class health". The same Government considers that the medical examination should take place near to the place of recruiting "as far as practicable". The Netherlands Government does not prefer the idea of a medical examination near to the place of recruiting to the system of examination at the port of embarkation practised in the Netherlands Indies. The British Government points out that, when the distance between the place of recruitment and the place of employment is short, it is of no importance where the medical examination takes place.

(b) Several Governments consider that two medical examinations should not be required in all cases. The British Government would empower the public officer before whom the recruited workers are brought to authorise their departure, in cases where a prior medical examination is not possible, on condition that he is reasonably satisfied that they are fit for the journey and the prospective employment and that they will be medically examined on arrival at the place of employment or as soon as possible thereafter. It should be left to the discretion of the competent authorities to prescribe two medical examinations in all cases where they consider them to be necessary in order to ensure that recruited workers are fit for a lengthy journey and that on arrival at the place of employment they shall not start work until they are fit to do so. The Netherlands Government considers that the requirement of a second medical examination is not necessary in the Netherlands Indies and that the decision should be left to national law and regulations. The Spanish Government does not consider that a second examination is desirable as a general rule; the decisive examination should take place before the document mentioned in Question 22 is issued to the worker.

(c) Several Governments consider that the question of the need for measures of acclimatisation and adaptation should be left to national law and regulations.

It would seem that these views must be taken into account in drafting the text to be submitted to the Conference.

### *Advances (Question 24)*

The Governments agree generally with the idea that the amount of advances of wages should be limited and regulated by law and regulations, but several Governments are unable to accept the proposal that advances should be made in the presence of the public officer before whom recruited workers are brought for the purposes of administrative supervision. The British Government could not accept, for general application, a stipulation to this effect, but suggests that, when advances have been made before or at the time of attestation of a contract, particulars of the advances should be entered on the contract; this suggestion would, it seems to the International Labour Office, be more suitably considered when the Conference is asked to discuss the question of contracts. This Government adds that worker-recruiters should not be permitted to make advances. The Netherlands Government also does not consider it desirable to provide that advances should be paid in the presence of the public officer before whom recruited workers are required to be brought, because the Netherlands Indian system only permits advances to be made after arrival at the port of disembarkation or at the place of employment. The view of the Netherlands Government could be met by providing that the rule should only be operative when advances are made before arrival at the place of employment or the port of disembarkation, but, in view of the British reply, it seems necessary to leave the decision to apply the proposed rule to the competent authorities.

### *Travelling Expenses (Question 25)*

By this question, the Governments were asked to express their opinions on the following proposals: (a) that the expenses of the journey of recruited workers to the place of employment should be borne by the recruiter or employer; (b) that the repatriation expenses should be borne by the recruiter or employer when the recruited workers are found unfit for employment. The Governments were also asked (c) whether repatriation expenses should be borne in any other cases by the recruiter or employer.

The replies to (a) are all affirmative with the exception of that of South Africa. In answering "No", the Government of the Union states that "wages would probably fall correspondingly and what is of great importance the voluntary labourer (of whom there are 100,000 to-day) would disappear as he would then find it more advantageous to be recruited in the ordinary way, the reason being that his travelling expenses were being borne by the recruiter". The reference to "voluntary labourers" in this reply no doubt alludes to workers proceeding to the gold mines under the "Assisted Voluntary System", which was described in the Grey Report

submitted to the Conference in 1935, and by means of which the employers' recruiting organisation is seeking to create an assisted but spontaneous movement of labour which may eventually make active recruiting unnecessary. It would certainly not be the wish of the Conference to insert in the Draft Convention provisions which, if adopted by the Union of South Africa, would have the effect of destroying the Assisted Voluntary System, or which, if the Union should decide not to accept them, would prove an insuperable obstacle to ratification. It should also be noted that the British Government mentions the possibility of having to modify the provision for application to recruiting in its territories for the Union. The Office therefore feels that, although the proposed provision is one to which considerable importance has been attached in the course of the preliminary discussions on recruiting, it should attempt to find a drafting that would meet the views of the South African Government and employers on this point.

(b) The Governments are unanimously in favour of this provision.

(c) Several Governments make suggestions regarding other cases in which the expenses of repatriation should be borne by the recruiter or employer. The Belgian reply mentions the normal expiry of the contract, and expresses the view that the decision in cases such as breach of contract by the worker should be left to the judicial authorities; it appears to the Office, however, that these cases should be left for discussion in connection with the question of contracts, and that the only cases which it would be proper to examine with a view to provisions in a Recruiting Convention are the cases in which the repatriation of the worker becomes necessary either in the course of, or as a result of a vice in, the recruiting process, or before the commencement of employment, whether under contract or not. The British Government suggests the addition of three other cases: when the recruited worker falls sick on the journey and is unable to proceed, when it is found that the regulations governing engagement or employment have not been complied with, when a worker becomes incapacitated by accident or disease during the term of employment, other than by his own misconduct or neglect. The Italian Government would include all cases of repatriation, while the Netherlands Government would include the case in which the recruitment is not followed by engagement. The Spanish Government would add all cases except that in which the employment is terminated owing to serious fault on the part of the worker. Finally, the South African Government would include the case of irregular acts of employers or recruiters in securing workers under false representations. The remark made above on the Belgian proposal applies also to a number of these suggestions, but it seems to the Office that it should include in the text submitted to the Conference the cases in which the worker becomes

incapacitated on the journey, in which the recruitment is not followed by engagement and in which it is found that the workers have been recruited under false representations.

*Subsistence (Question 26)*

The answers to this question are in the affirmative. The British Government, however, would exclude the case of workers recruited by worker-recruiters.

*Transport (Question 27)*

This question is also answered favourably by all the Governments, except that in this matter also the British Government is not prepared to accept the obligation in the case of workers recruited by worker-recruiters on the ground that it is not always possible in such cases for employers to make transport arrangements in advance.

*Journeys on Foot (Question 28)*

The Governments agree with the proposal in this question. The Spanish Government considers that the proposed measures are necessary in order to ensure that more than a normal effort is not required of the recruited worker ; the same Government suggests that an inspection service should be required. This suggestion, however, may be thought either to go too far or to be unnecessary ; it is implicit in the proposed requirement that the authorities would take the necessary steps to ensure the due application of the provision. None of the other replies make additional suggestions on this point.

*Convoyers (Question 29)*

This question is answered in the affirmative. In regard to worker-recruiting, however, the British Government points out that the provision is unnecessary as the recruiter is the convoyer. The Spanish Government would limit the requirement to cases where the group of workers consists of more than twenty-five persons and the journey is one of more than four days ; these details should, it seems to the Office, be left to the national law and regulations.

*Families of Recruited Workers (Question 30)*

The desirability of the application of the protective provisions outlined in previous questions to the families of recruited workers, when they have been authorised to accompany the workers, is generally recognised. Some of the provisions, however, are not considered to be applicable. Great Britain mentions the provisions relating to the memorandum of information and advances as being inapplicable ; France considers that all the provisions would be applicable only when the

families were recruited as such, otherwise it would be enough to provide that the expenses of transport, subsistence during the journey, and repatriation should be borne by the recruiter or employer; the Netherlands is of opinion that the provision relating to administrative supervision, the memorandum of information, medical examination and advances would be inapplicable to families, unless they are themselves recruited, while for the purposes of the other provisions the family should be limited to wives and minor children. The only solution would appear to be to provide that the competent authorities should take such protective measures as they deem necessary when the families of recruited workers are authorised to accompany them to the place of work.

### *Special Case of Recruiting by Workers (Question 31)*

The replies to this question are generally in the affirmative. The Italian Government, however, observes that the provisions would only be applicable when a considerable number of workers are recruited for a given undertaking; there is no need to deal in the international regulations with the occasional recruiting of small numbers of workers. The British Government, as has been noted above under various questions, considers that such provisions as those for payment of travelling expenses and subsistence for the journey to the place of employment, and transport are not uniformly applicable in the case of worker-recruiting, while this Government would prohibit the making of advances of wages by worker-recruiters. In regard to this matter, therefore, it would appear necessary to leave more latitude to the competent authorities than was contemplated in the question.

## VII. — ADDITIONAL PROVISIONS FOR MIGRANT WORKERS

Questions 32 to 35 (Replies on pp. 56 to 63); Question 36 (Replies on pp. 63 to 65); Question 37 (Replies on pp. 65 to 67); Question 38 (Replies on pp. 67 to 68)

### *Agreements between Administrations (Question 32)*

In this question the Governments were asked, firstly, whether they thought that the recruiting of workers in one territory for employment in a territory under a different administration should be permitted only under conditions stipulated in agreements between the competent authorities of the territories concerned, and secondly, if the reply to the first part was affirmative, whether certain provisions should be contained in such agreements.

Most of the replies to the first part of the question agree with the proposed provision. The Government of Belgium, however, considers that the question was formulated in too absolute terms, and that provision should be made in the Draft



Convention either for agreements between administrations or for unilateral measures, as contemplated in Question 37. The British Government does not consider that a provision stipulating agreements between administrations should be inserted in the Draft Convention. It recognises that an administration has a special responsibility when it allows recruiting for employment in another territory, and that such recruiting should not be permitted unless there is every assurance that the conditions of employment will be reasonably satisfactory. In some cases it may be desirable for the administrations concerned to enter into formal agreements, and in any case it would always be open to an administration to decline to allow recruiting unless the administration of the territory of employment were prepared to conclude an agreement. The proposed provision, however, is not necessary, and, in particular, it is not necessary to provide for agreements between administrations of territories belonging to the same State.

In view of these replies it would appear to be impossible to provide that agreements should in all cases be a necessary condition of recruiting in one territory for employment in another. On the other hand, there would seem to be no reason why a solution should not be sought on the lines of the Belgian proposal, and suggestions to this effect will be inserted in the text to be submitted to the Conference.

The majority of the replies are favourable to the suggestions in the second part of the question. The Belgian Government makes the same observation as on the first part, and the British Government does not refer to the specific proposals in this part of the question. The Government of India, which approves the principle of agreements, remarks that the power to impose restrictions on recruiting should be retained by the Government of the country in which recruitment takes place. The Government of South Africa would add to the proposed matters to be covered by agreements the following points: provision for the effective repatriation of recruited workers, and payment of compensation to workers and dependants of deceased workers due under any law or regulation in force within the area of employment.

The only points which arise out of these replies are the additional proposals of the South African Government, and it hardly seems necessary to examine in detail the question of the desirability of their inclusion in view of the modifications to this part of the proposed Draft Convention which seem to be necessary as a result of the replies to the first part of Question 32. It may be observed, however, in regard to the proposal for a provision relating to repatriation, that it is understood that any provisions the Conference may adopt on the basis of the replies to Question 25, as well as all other provisions applying to recruited workers generally, would apply to workers recruited for employment in another territory as much as to

workers recruited for employment in the territory of recruitment. It would, therefore, seem obvious that any State which ratifies the Convention would be under an obligation to satisfy itself that these provisions would be applied in any cases in which it permitted recruiting for employment in another territory. The provision relating to the payment of compensation would, it seems to the Office, be in any case outside the scope of the proposed Draft Convention, in which no attempt has been made to determine what should be regarded as satisfactory conditions of employment for the purpose of deciding whether recruiting should be permitted.

### *Recruiting Agencies (Question 33)*

The idea underlying this question was that recruiting for employment in another territory could be more effectively organised and controlled if it were exclusively entrusted to organisations (e.g. organisations of employers) the rules of which had been approved by both parties to the agreement proposed in Question 32 ; in the absence of such organisations it was suggested that the administration of the territory of recruiting should maintain control by requiring recruiting agents to hold licences issued by this administration.

The replies to this question are mostly affirmative. The Belgian Government makes the same reservation as to the proposal relating to agreements ; but it may be observed that the Government's views are apparently met by the alternative suggested in the question. The British Government considers that a provision based on the question would debar an administration from permitting, even under licence, the recruiting of workers in its territory by an employer (or his duly authorised agent) from the territory of another administration ; the Government sees no reason for such a prohibition, which might involve unnecessary inconvenience especially in the case of an employer whose undertaking was situated near the frontier. It is not quite clear whether this objection is based on the interpretation of the term "recruiting agents" as excluding employers, or is directed to the requirement of a licence issued by the administration of the territory of recruiting. The first point can be met in the drafting of the text, as there would seem no reason to give a restrictive meaning to "recruiting agents". On the other hand, unless there is serious objection to the requirement of a licence issued by the administration of the territory of recruiting, it seems to the Office that this provision should be maintained, although it might be tempered by the addition of the idea that it would suffice if the recruiter were in possession of a licence recognised by the administration of the territory of recruiting.

The Netherlands Government states that "it seems absolutely superfluous" that the rules of the recruiting organisations contemplated in the question should be subject to approval

by the administration of the territory of employment. The object of this suggestion was to ensure that the administration of the territory of employment should have a guarantee that the recruited workers to be admitted to its territory have been recruited under proper conditions; however, in view of the objection of the Netherlands Government it may seem undesirable and unnecessary to maintain this requirement.

#### *Administrative Supervision (Question 34)*

The proposal in this question is accepted by all the Governments, but the British Government thinks it necessary to delete the words "at the place of departure" on the ground that in some cases there is an interval between the attestation of contracts by the public officer and the time of departure of the workers and it is not always convenient to reassemble the recruited workers. This objection, however, does not appear to be raised so much by the words "at the place of departure" as by the assumption that the authorisation of departure must be given immediately before departure. This assumption does not seem to the Office to be a necessary one, in view of the terms of the question. Moreover, the deletion of the words "at the place of departure" would defeat the main purpose of the provision, which is to ensure that, as an additional measure of protection for recruited migrant workers, there should be a final control of the regularity of the recruiting at the place of departure.

#### *Medical Examination (Question 35)*

This question asked (a) whether there should be a medical examination of recruited migrant workers before departure, (b) whether measures should be taken immediately before departure to ensure that the workers are physically fit and have been inoculated (when such inoculations are prescribed), (c) whether a medical examination should be required on arrival when the journey involves a voyage by sea or inland waterway of a specified duration.

To part (a) of the question, the replies are all favourable, but the British Government qualifies its approval by the words "as a general rule". This Government points out that examination before departure may not always be practicable, and suggests that the public officers concerned should be authorised to permit departure if they are reasonably satisfied that the workers are physically fit for the journey and the prospective employment. The British Government makes the same reservation to part (b), which the Netherlands Government does not consider necessary, although the objection is apparently only to the word "immediately" as the measures contemplated are taken in the Netherlands Indies some time before departure. As regards (c), the Netherlands Govern-

ment considers that the necessity of such an examination should be left to the appreciation of the competent authorities ; the Government does not consider that a voyage by sea in properly adapted vessels presents as much danger to the health of the workers as long journeys on foot. The Spanish Government considers that a medical examination on arrival should be required only when the voyage is of such duration and made under such conditions that the health of the workers may be affected. These views will be taken into account in drafting the text.

### *Journey of Recruited Migrant Workers (Question 36)*

Only a few observations are made in the replies to this question, which is generally accepted by the Governments. The French Government considers that the suggested provisions should be prescribed in administrative regulations. The Government of India observes that when recruited workers travel by ordinary passenger ship the protective measures should be the same as for ordinary deck-passengers ; it agrees that, when workers travel by special ships, questions of responsibility and protection should be adjusted by agreement. The Netherlands Government agrees generally with the proposals, but does not consider it necessary to make provision for convoying, and the Spanish Government suggests that a convoyer should only be required when more than twenty-five workers travel together. The Netherlands Government also states that it is only concerned with measures for the protection of the inhabitants of its own territories for employment abroad, and not with foreign workers recruited for employment in the Netherlands Indies.

### *Unilateral Measures in Default of Agreement (Question 37)*

The replies are mostly in the affirmative, with some qualifications. The British Government replies "Yes, in so far as the measures of protection are within the competence of the administration concerned". The Government of India thinks it unlikely that unilateral action would be effected in default of agreement. The Netherlands Government has no objection to the recruiting of workers in other territories for employment in the Netherlands Indies being subordinated to special provisions, and it is willing to co-operate with other Governments. The Spanish Government agrees, provided that the unilateral measures are not a disguised prohibition of the spontaneous movement of labour. No such danger could arise out of this provision, which is not concerned with the spontaneous movement of labour ; on the other hand, in the absence of an agreement, the country of recruiting would retain full liberty to permit or prohibit recruiting.

*Families of Recruited Migrant Workers* (Question 38)

The provision suggested in this question is generally accepted. The French Government expresses the view that in this case also the application of the principle should be left to the national regulations. The British Government considers that the provisions suggested in Questions 32 and 33 are not applicable, but that the other provisions should be applied to the same extent as the Government has accepted them for application to the workers themselves. The Netherlands Government does not consider that it is necessary to provide for administrative supervision or for medical examination in the case of families. These replies show that there is unanimity as regards the application to families of provisions regarding the journey of recruited migrant workers, but that the taking of other measures should be left to the competent authorities.

VIII. — APPLICATION OF ARTICLE 421 OF THE TREATY

Question 39 (Replies on pp. 68 to 70)

In this question the Governments were asked (i) whether they considered that the proposed Draft Convention should contain a provision designed to ensure its widest possible application in the territories referred to in Article 35 (421) of the Constitution of the International Labour Organisation, and (ii), if so, whether such a provision might be drafted in the same form as Article 26 of the Convention concerning forced or compulsory labour.

Article 26 of the Forced Labour Convention, 1930, is in the following terms :

"Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction ; provided that, if such Member may desire to take advantage of the provisions of Article 421 of the Treaty of Versailles and of the corresponding Articles of the other Treaties of Peace, it shall append to its ratification a declaration stating :

"(1) the territories to which it intends to apply the provisions of this Convention without modification ;

"(2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications ;

"(3) the territories in respect of which it reserves its decision.

"The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration."

The following Governments have answered both parts of the question in the affirmative without qualification : Belgium, Chile, China, France, Spain, South Africa, and Yugoslavia.

The Government of Bulgaria answers in the negative. The Government of India states that the question is of no concern to India, and the Government of 'Iraq has no views on the matter.

The Netherlands Government answers in the affirmative, but recalls its proposal in replying to Question 4 that provision should be made to leave the decision regarding the territories to which the Draft Convention should be applied to the competent authorities.

The Italian Government states that "it does not seem advisable to adopt special provisions for the application of the Convention to colonies, particularly if the principle is adopted that the rules embodied in the Convention in question should be applied to each colony, possession or protectorate with the necessary modifications to suit local conditions". However, the Government states that it is not opposed to the proposals suggested in this question.

The British Government, replying to (i), states that it does not see any necessity for the insertion of a special provision of the kind suggested as it considers that Article 35 (421) of the Constitution "already constitutes a sufficient obligation to ensure the widest possible application of all International Labour Conventions, which a Member ratifies, in the territories referred to in that Article". Nevertheless, the Government would have no objection to the inclusion of a suitably worded provision. Such a provision, states the British Government, in reply to (ii), would not be one in the form of Article 26 of the Forced Labour Convention. In the view of the British Government an undertaking to "apply" a Convention in a colony implies taking some positive action (whether legislative or administrative) to give effect to the provisions of the Convention; but there are British dependencies in which there is no labour recruiting as defined for the purposes of the Convention and in such territories the Government would regard the Convention as inapplicable; the Government is unwilling to accept a formula under which it would appear to give an undertaking that the Convention would be "applied" in such cases. Further, the British Government considers that Article 26 of the Forced Labour Convention is open to the criticism that the reference in it to Article 35 (421) of the Constitution implies that that Article does not impose a general obligation (subject to exceptions in certain specified circumstances), but merely affords a procedure for limiting the general obligation embodied in the first sentence of Article 26. The British Government proposes, in the reply to Question 2, a draft Article, which embodies an appropriate reference to Article 35 (421).

As a result of these replies it seems necessary to consider whether there is any need for the insertion in the proposed Draft Convention on recruiting of an Article reproducing, in whole or in part, the terms of Article 26 of the Forced Labour

Convention, or an Article such as the one proposed by the British Government.

In examining Article 26 of the Forced Labour Convention, it is desirable to distinguish between the obligation laid down at the beginning of the Article and the terms of the proviso ; it would appear that the criticisms and reservations made in the replies relate to the undertaking to apply the Convention in all territories subject to the sovereignty, jurisdiction, protection, suzerainty, tutelage or authority of the ratifying State, rather than to the provisions of the proviso which merely define the procedure to be followed in the application of Article 35 (421) of the Constitution. It is proposed, therefore, to consider in the first place the need for a provision in similar terms to the one contained in the first phrase of Article 26 of the Forced Labour Convention.

The provision in question was included in the Forced Labour Convention not only because it was desired to ensure that the Convention should have the widest possible application in colonial territories, but also because it was desired that it should have the same geographical field of application and the same character of universality as the Slavery Convention, out of which the Forced Labour Convention in some respects arose and from which the terms of the obligation laid down in Article 26 were reproduced with some modifications. Apart, therefore, from the considerations put forward in the replies, there can be no doubt that there is far less justification for the insertion of such a provision in the proposed Draft Convention on recruiting than there was for its inclusion in the Forced Labour Convention. The proposed Draft Convention on recruiting directly concerns only a limited number of Members ; it is intended to be applied only in the territories in which there exists active recruiting of labour as defined ; there is no reason, other than the desirability of securing the widest possible application of the Convention in the territories in which there is recruiting, for the insertion of a special provision. If, therefore, this latter purpose can be achieved in another manner which is acceptable to all the Members concerned, there would appear to be no special grounds for maintaining the proposal to insert the first part of Article 26 in the draft now under consideration. A subsidiary ground for the choice of the terms of Article 26 of the Forced Labour Convention was the desire to ensure that the Convention would apply to mandated territories ; it has, however, now become the established practice of the Mandatory Powers to deal with mandated territories under Article 35 (421) of the Constitution ; moreover, it would seem possible to cover this point also in the general alternative solution envisaged above.

Further cogent reasons for abandoning the text of Article 26 are to be found in the British Government's reply. The first of these reasons is, it is true, contingent. The interpretation

of Article 35 (421) of the Constitution by the British Government as constituting a sufficient obligation to ensure the widest possible application of all International Labour Conventions, which a Member ratifies, in the territories referred to in that Article, is an interpretation of very great importance, and, if generally accepted, would itself be enough to render unnecessary the text of Article 26. The second reason is of a practical kind. The British Government interprets an undertaking to "apply" the provisions of a Convention as involving an obligation to take legislative or administrative action and it is unwilling to assume an obligation to take such action in territories in which there is no recruiting as defined.

The conclusion the Office draws from these considerations is that it would be preferable to attempt to draft a different formula from the one used in Article 26 of the Forced Labour Convention in order to lay down the principle that the proposed Draft Convention on recruiting should have the widest possible application in the territories in which recruiting exists. A formula is proposed in the text submitted by the British Government in its reply to Question 2. In examining, in connection with Question 2, the problem of defining the scope of application of the proposed Draft Convention, the Office suggested that the Conference would possibly prefer a more positive solution than the one contained in the British Government's text as far as concerns the problem of the exclusion of the metropolitan territories of a ratifying State in which there is no recruiting as defined or no recruiting to which the Convention is intended to apply. The same consideration appears to apply to the territories referred to in Article 35 (421) in which there is no recruiting. The Office will, therefore, formulate in the draft to be submitted to the Conference a suggestion which seems to meet the necessities of the situation in a way acceptable to all the States concerned.

There remains to be considered whether an Article on the lines of the proviso to Article 26 of the Forced Labour Convention should be proposed to the Conference. As already stated, this part of Article 26 lays down the procedure to be followed in regard to the application of Article 35 (421) of the Constitution. This procedure has proved to be valuable and no objection has been taken to it. It seems to the Office, therefore, that it should be provided for in the text contained in this Report. The British Government's draft introduces a few modifications of the text of Article 26, and in drafting an Article suited to the present proposed Draft Convention, the Office will take these changes into account.

### **The Progressive Elimination of Recruiting**

Question 40 (Replies on pp. 70 to 74)

The question whether the Governments considered desirable the adoption of a Recommendation concerning the progressive



elimination of recruiting by various specified methods has revealed considerable divergencies of opinion. A number of Governments, including those of Belgium and Italy, approve the suggestion without reservations; the Netherlands, Spanish and South African Governments approve the principle but make some observations on the proposed provisions; the French Government considers that the Recommendation is neither urgent nor necessary; the Governments of Great Britain and India answer the question in the negative.

The Government of Great Britain explains that it does not dissent from the view that the final object to be attained is the obtaining of workers by the spontaneous offer of labour. It points out, however, that the implication in the question that one of the reasons why recruiting is still necessary is that conditions of employment are not sufficiently favourable to attract the spontaneous offer of labour does not correspond to the reality of the situation in a number of areas where the demand for labour is met by recruiting. On the contrary, in a number of territories the conditions of employment are so attractive that there are always large numbers of workers who are willing and anxious to be recruited. In some territories, organised recruiting is the only practicable means of bringing the workers into contact with the possibilities of employment.

The British Government further draws the attention of the Conference to the undesirable situation which has arisen in some territories as a result of the excessive spontaneous movement of potential labour to the areas of employment. Large numbers of the Natives concerned have travelled long distances without any certainty of employment or repatriation, or facilities on the journey, or arrangements for remittances to their dependants, all of which would be assured to them under a properly regulated system of recruiting. The problem in such territories is the restriction of the spontaneous movements of large numbers of Natives, and the Government considers that it would be impracticable on financial grounds to set up public employment agencies or branches of employers' organisations under public supervision for controlling the movement of labour. In other British territories, where there is a properly regulated system of recruiting, the Natives prefer to make use of the facilities provided rather than undertake long and fruitless journeys on their own initiative.

In the light of its experience, the British Government therefore considers that it may be necessary to contemplate an extension rather than a contraction of properly regulated and controlled arrangements for recruiting, though every encouragement will continue to be given to the operations of employers' organisations where it is possible for such organisations to work economically and efficiently. The Government does not consider that any useful purpose would be served

by the adoption of a Recommendation on the lines indicated in the question.

The negative reply of the Government of India states that all regulation of internal recruiting should in course of time be unnecessary, but employment abroad will probably have to be regulated by international agreement whatever improvements are made in labour conditions.

In its favourable reply, the Netherlands Government expresses the opinion that, in the circumstances of the Netherlands Indies, intensified measures for facilitating colonisation would be more effective than the suggestions under (a) and (b) in the question; as regards (c), the Government considers that the systems regarded as most suitable for facilitating the movement of labour in the Netherlands Indies would probably remain within the definition of recruiting.

The Spanish Government does not consider the proposals in (c) to be acceptable, as they might be a means of preventing workers from moving to places where conditions of employment are more favourable.

The Government of South Africa does not favour Government labour exchanges under the charge of Government officers.

It appears to the International Labour Office that the only conclusion to be drawn from these replies is that it would not be justified in placing a Recommendation in the terms of Question 40 before the Conference. Nor do the replies give any indication of the lines on which a useful and acceptable Recommendation in other terms could be drafted. Two of the Governments most directly concerned, those of France and Great Britain, do not favour the Recommendation, the one because the spontaneous flow of labour exists in many of its territories, the other because it contemplates the necessity for the extension rather than the restriction of recruiting. The replies of other Governments directly concerned express divergent views on the value of the methods suggested for realising the elimination of recruiting. The only constructive suggestion is that of the Netherlands Government regarding the value of encouraging settlement and that point is included in the proposals for a Recommendation made in Question 41. In these circumstances, it would seem preferable to abstain from submitting a text on the subject of the progressive elimination of recruiting, since any text which would be likely to be accepted would have to be so general in its terms as to have little practical value.

## **Facilities to be granted to Recruited Workers and their Families**

Question 41 (Replies on pp. 74 to 77)

To the question whether a Recommendation should be adopted concerning the granting to recruited workers and

their families of facilities such as land for settlement or the cultivation of food supplies, the right to acquire immovable property, and schooling, only one reply is definitely negative. This reply is by South Africa, which describes the policy of the Union Government as being not to encourage the permanent settlement of recruited labour in industrial areas; on the contrary, the Government anticipates that such labour will return to the Native reserves. The proposals in paragraphs (a), (b) and (c) would not accord with this policy, and even when recruited labour is employed in rural areas the proposals would not be acceptable as the areas of employment would not be in areas set aside for Native occupation.

The replies of Great Britain and India, while accepting the idea of the Recommendation, state that these Governments do not consider the proposals suitable for application in all circumstances. The Government of Italy approves of paragraphs (b), (c) and (d), but would qualify (a) by the words "in so far as it may be compatible with the system of land tenure". The Government of the Netherlands specifies, in regard to (a), that such settlement should be on employers' land, the land in the neighbourhood of undertakings being used for the settlement of time-expired contract workers; in regard to (b), that only land not belonging to undertakings could be so acquired; and in regard to (c), that such provision could only be made on employers' land. The Spanish Government considers that the basic principle of the proposed Recommendation might be included in the Draft Convention.

It would appear that most of these observations of the Governments are more in the nature of statements concerning the conditions under which the principles of the proposed Recommendation would, if accepted, be applicable, rather than amendments that could suitably be made in the text. As regards the Spanish Government's suggestion, it seems to the Office that the general sense of the replies would hardly warrant the insertion of such a provision in the proposed Draft Convention.

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## CHAPTER III

### COMMENTARY UPON A PROPOSED DRAFT CONVENTION AND RECOMMENDATION

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The conclusions which the International Labour Office has been led to draw from the comparative analysis of the replies of the Governments to the Questionnaire have been generally indicated, in so far as the replies have brought out new points or have revealed divergencies of opinion, in the preceding chapter. It is the purpose of the present chapter, which is followed by the texts of a proposed Draft Convention and a proposed Recommendation drafted by the International Labour Office, to explain in more detail, and in the form of a commentary on the texts, the nature of the Office's conclusions.

#### Commentary on the Proposed Draft Convention

The replies to the Questionnaire show that the Governments of those Members which would be directly affected by the ratification of a Draft Convention concerning the regulation of certain special systems of recruiting workers are in favour of the adoption of such a Convention by the Conference, but that they consider that the provisions suggested in the Questionnaire should be made less rigorous on a number of points and generally that a wider latitude than was contemplated in the Questionnaire should be left to the competent authorities in the application of the principles embodied in the Convention.

The Office has endeavoured to take account of these opinions of the Governments in drafting the text at the end of this chapter. It has had constantly in view the desirability of the adoption of a Draft Convention in such a form that the Convention could be ratified by all the States directly concerned. It has also had in view, for the reasons given in Chapter II in discussing the replies to Questions 2 and 39, the desirability of the adoption of a text that would reduce to a minimum the need for making modifications in virtue of Article 35 (421) of the Constitution in applying the Convention in the territories referred to in that Article. In other words, the Office has attempted to draft the text which is intended to serve as the basis of discussion in such a manner that the Draft Convention that may be adopted will be acceptable to States which have, within their home territories, dependent indigenous populations among whom labour is recruited and which cannot make modifications of the provisions of the Convention in order to adapt them to local conditions, as well as acceptable to States which administer dependent territories.

For this purpose, it has been necessary to suggest simplifications of a number of the provisions indicated in the Questionnaire, and to propose that a number of matters, in regard to which the Questionnaire contemplated definite rules, should be left to the discretion of the competent authorities of the States. Attention will be drawn to these points in commenting on the several Articles of the draft. It seems only to be necessary here to point out that, having regard to the nature of the replies to the questions relating to additional provisions for migrant workers, the provisions concerning migrants which it has appeared desirable to retain have been embodied in the Articles relating to recruited workers generally, with the exception of the provisions concerning the special measures to be taken before permitting the recruiting of workers for employment in another territory, agreements between administrations, etc., which have been placed in Article 22.

The framework of the proposed Draft Convention is as follows : Articles 1 and 2 contain the general obligation to be assumed by States ratifying the Convention and the definitions ; Articles 3 to 6 lay down certain general principles ; Articles 7 to 13 deal with the agencies for recruiting, licensing, and worker-recruiters ; Articles 14 to 21 are concerned with measures for the protection of recruited workers ; Article 22 relates to the recruiting of migrant workers ; Article 23 deals with exceptions ; and Article 24 contains provisions relating to the application of Article 35 (421) of the Constitution.

## ARTICLE 1

In this draft Article the Office has attempted to express, as exactly as possible, the general obligation which would be assumed by States which ratify the Convention. Read together with the definitions in Article 2, the terms of this Article are also designed to delimit the field of application of the proposed Draft Convention.

As was pointed out in Chapter II, there can be no doubt as to the intentions of the International Labour Conference and the Governing Body of the International Labour Office regarding the field of application of the proposed regulation of recruiting. The question is, and has been studied as, one of " Native labour " — the labour of indigenous dependent peoples who are governed by other non-indigenous peoples ; in other words, the labour of those peoples who are described in Article 22 of the Covenant of the League of Nations as being " not yet able to stand by themselves under the strenuous conditions of the modern world " and to whom the principle " that the well-being and development of such peoples form a sacred trust of civilisation " applies in full force. It is for the safeguarding of the well-being and development of such peoples, as well as for the most efficient organisation of the methods of obtaining their labour by re-

cruiting, that such special and detailed provisions as those now in contemplation are necessary.

The draft Article, therefore, expresses the general obligation to be assumed by a State which ratifies the Draft Convention as being to regulate the recruiting of indigenous workers, in each of its territories in which such recruiting exists or may hereafter exist, in accordance with the provisions of the Convention. The obligation is thus definitely limited to the recruiting of indigenous workers, as these terms are defined in Article 2, and to the territories in which there is recruiting or in which recourse may be had to recruiting in the future. It would appear to cover all the situations to which it was intended by the Conference that the regulation of recruiting in the manner proposed in the Questionnaire should be applicable, although some marginal cases to which a Convention with less definite contours might have been deemed to be applicable are probably excluded. On the other hand, the formula makes it quite clear that States ratifying the Draft Convention will not be assuming a theoretical obligation to apply its provisions either in their home territories or in their dependent territories in which there is no recruiting of indigenous workers as defined.

## ARTICLE 2

This Article contains the suggested definitions of "recruiting" and of "indigenous workers".

The definition of "recruiting" remains substantially as proposed in the Questionnaire. By virtue of this definition, no worker who goes spontaneously in search of employment to an undertaking, or to a public labour exchange or a public emigration office, or to an office of an employers' organisation under public supervision would be deemed to be recruited. On the other hand, any indigenous worker whose labour is obtained or supplied by active solicitation or by the operations of any agencies other than those mentioned above would be deemed to be recruited.

The definition of "indigenous workers" is a new proposal designed to express, together with the definition of "recruiting" and the terms of Article 1, the exact field of application of the proposed Draft Convention. The Draft Convention is intended to regulate the recruiting of "Native labour", and this labour is that of the indigenous populations of colonial territories or of self-governing countries where the indigenous populations are not in enjoyment of citizen rights but are in a position of dependency or tutelage; the "Native labour" concerned may, however, also be that of persons who do not belong to the indigenous populations of the territory of recruiting but are, for example, migrants belonging to the indigenous populations of neighbouring territories, and whose status and economic

circumstances in the territory of recruiting are essentially the same as that of the indigenous populations.

The Office therefore suggests that the term "indigenous workers" can be sufficiently clearly defined as including "persons belonging to or assimilated to the indigenous populations of dependent territories and persons belonging to or assimilated to the dependent indigenous populations of fully self-governing countries." Although this text itself uses undefined terms such as "dependent territories" and "fully self-governing countries", it would not appear that its interpretation could give rise to difficulties: dependent territories are the territories referred to in Article 35 (421) of the Constitution as "colonies, protectorates and possessions which are not fully self-governing" and include territories under "B" and "C" mandates, while the expression "fully self-governing", which is used but not defined in the Constitution, can only have the meaning of independent States and colonies, protectorates and possessions which are not covered by the provisions of Article 35 (421).

### ARTICLE 3

The history of colonial development shows that one of the greatest dangers to which indigenous populations are exposed is an excessive demand for labour, which may result in the exercise of various forms of pressure and constraint on these populations to furnish the labour required, and in the disintegration of their political and social organisation. It is suggested in the draft Article that, before approving proposals for economic development which will involve a demand for labour, Governments should take such measures as may be necessary and practicable to avoid the danger of improper pressure to provide labour, to ward off the dangers of social and political disintegration, to ensure as far as possible that the peoples concerned will conserve the vitality necessary to adjust themselves to the new economic conditions, and to deal with any other foreseeable evils that might result from a considerable demand for labour.

It should be observed that the only obligation laid down in the Article is that of taking these matters into account in connection with development policy. It is left to the competent authorities to judge when preventive measures are necessary and what kind of measures may be necessary and practicable. The undertaking to take measures to safeguard the populations which may be used as sources of labour supply is thus of a very general and conditional character. Nevertheless, such measures have in a number of cases been found necessary and practicable by colonial administrations, and the inclusion in the Draft Convention of such provisions as those of this Article may be considered to be justified by the undoubted value, both on humanitarian and practical grounds, of their acceptance and application as local conditions may require.

#### ARTICLE 4

This draft Article deals in effect with one order of measures that the competent authorities might find necessary and practicable for the purposes of Article 3. It provides that, before recruiting is permitted, consideration should be given to the possible effects of the withdrawal of adult males on the conservation of the populations concerned, on their well-being and development and especially the maintenance of the food supply, on family life and the preservation of moral standards, and on the social organisation. Where necessary and practicable, a method of regulating the number of adult males who may be recruited so that the number remaining in the villages does not fall below a prescribed percentage of the normal proportion of men to women and children is proposed; this is a method which, as explained in the Grey Report, has been applied with success in the Belgian Congo.

Here again the undertaking implied in the Article is limited to the consideration by the competent authorities of the effects of permitting recruiting which would result in the withdrawal of adult males from the life of the communities concerned, and it is left to the authorities to draw conclusions from this consideration. One method of preventing excessive recruiting is suggested, but the necessity and practicability of its application is likewise left to the appreciation of the competent authorities.

#### ARTICLE 5

The policy referred to in the first paragraph of this draft Article is one on which there are wide divergencies of opinion. These divergencies of opinion, however, appear very largely to reflect local circumstances. Where it is desired to attract and retain a labour force of a more or less stable character, the practice of encouraging recruited workers to be accompanied by their families, or more frequently of recruiting families, is favoured; where the prevailing consideration is that of conserving indigenous societies and guarding against detribalisation, or where the assembling of large bodies of workers and their families in the areas of employment is impracticable, the policy to which the paragraph relates is not favoured.

The proposed text takes account of these differing circumstances by providing that the undertaking to apply the policy of encouraging recruited workers to be accompanied by their families shall only operate "where the circumstances make the adoption of such a policy practicable and desirable", and of this the competent authorities must obviously be the sole judges. Moreover, it is recognised that the hardship inflicted on recruited workers by separation from their families is greatest when the separation is for long periods and when the employment is at such a distance that periodical visits to their homes are



precluded ; it is also recognised in the text that the application of the policy suggested is more feasible in the case of agricultural and similar employment than in the case of such employment as mining. It seems, therefore, that while embodying a valuable principle, the first paragraph of this Article is sufficiently contingent as not to prevent the ratification of the Convention by States which would be unable, by reason of local conditions in their territories, to apply the policy of encouraging workers to be accompanied by their families.

The provision regarding the separation of recruited workers from their families has been slightly modified to meet observations made in the replies of the Governments ; it is explicitly stated that the provision applies only when the families have been authorised to accompany the workers, and, to make it clear that the paragraph is not intended to prevent the repatriation of families by the competent authorities, the idea that it applies only while the families are authorised to remain with the workers at the place of employment has been added.

#### ARTICLE 6

The proposed provision for the grouping of recruited workers according to their ethnic affinities has been inserted in this Article, with the qualification " where the circumstances make the adoption of such a policy practicable and desirable ", in order to take account of views expressed in the replies.

#### ARTICLE 7

This text reproduces, with slight drafting changes, the provision which was suggested in the Questionnaire and generally accepted by the Governments. The prohibition of recruiting by public officers for private undertakings is one of the most important principles of labour policy in territories of the colonial type. It has often been observed, in explanation of this prohibition, that the position of the administrative officer is such that his wish is often equivalent to a command, and if recruiting by administrative officers for private undertakings were generally permitted such recruiting would not be far removed from compulsion to labour. A further consideration is the incompatibility between the exercise of the functions of recruiter and of those of the authority supervising the regularity of recruiting operations.

#### ARTICLE 8

No change has been made in this case in the text proposed in Question 13 of the Questionnaire. The provision is based on the experience that recruiting by chiefs and other indigenous authorities (e.g. elders, notables) is practically tantamount to

forced labour, often imposed on the weakest and least self-reliant members of the community. The Article does not prevent altogether the association of chiefs with recruiting, whether by lending their good offices or performing various administrative functions; it only seeks to prohibit them from acting as recruiters, from exercising pressure on members of their communities to accept recruitment, and from being paid any special remuneration for their assistance in connection with recruiting.

#### ARTICLE 9

The provision in this Article has been drafted in accordance with the proposal in the Questionnaire, which was generally accepted by the Governments. Professional recruiting is recruiting carried on as a commercial undertaking for the sake of profit. In its most extreme form, the professional recruiter recruits, or obtains an option on the labour of, workers whom he then "sells" to any employer who requires labour. Professional recruiting has been entirely abolished in some territories. The present draft, however, does not go as far as that; but it seeks to prohibit professional recruiting in the extreme form described above and to limit recruiting which is carried on as a commercial enterprise for pecuniary gain to operations undertaken by persons or companies who are acting on behalf of a public administration, or of one or more specific employers or organisations of employers. Such recruiters, it is proposed, should also be required to be licensed by the competent authorities in accordance with Article 11. The intention of these restrictions is to eliminate the irresponsible and speculative element in professional recruiting, and to confine it to operations where the recruiter is in effect acting as an agent of a specific employer or employers.

#### ARTICLE 10

This Article also follows the text of the Questionnaire, which gave rise to no objections by the Governments. It imposes an obligation to permit recruiting by the persons or organisations mentioned only under licence. These persons or organisations are individual employers and the agents of such employers, organisations of employers which undertake recruiting on behalf of their members and the agents of such organisations, and special recruiting organisations subsidised by employers and the agents of these organisations. It should be observed that, in the case of organisations and their agents, both the organisations and the agents would be required to be licensed under the terms of this Article.

## ARTICLE 11

In this Article have been grouped the whole of the provisions relating to the issue, duration of validity, renewal and withdrawal of licences. Several changes have been made in the text of the Questionnaire in order to take account of observations made by the Governments.

Sub-paragraph (a) of the first paragraph, which provides that individual licensees must be fit and proper persons, remains unchanged.

Sub-paragraph (b) of Question 18 suggested that every licensee should deposit security for his proper conduct as a licensee, but asked the Governments to give their opinion as to the desirability of imposing this condition in respect of each system of recruiting. The conclusion the Office draws from the replies is that security should be required to be deposited by all individual licensees and by professional recruiting organisations, but not by organisations of employers, whose agents only would be subjected to this requirement. The opinion was expressed by one of the Governments most directly concerned that employers and their agents, when the latter are persons employed in the employer's own business, should not be required to deposit security. On the other hand, another Government with much experience of recruiting and its regulation considers that employers should be required to deposit security not only to ensure the payment of any penalties that might be imposed on them for breaches of the regulations, but also as security for the payment of wages. In these circumstances, the Office feels that this question must be left open in the text to be submitted to the Conference.

In sub-paragraph (c) of paragraph 1 of the Article, the Office has placed without substantial change the provision requiring that arrangements shall have been made for safeguarding the health and welfare of the workers to be recruited (sub-paragraph (e) of Question 18).

No substantial change has been made in sub-paragraph (c) of Question 18, which relates to the keeping of records of recruiting operations, but it has seemed more logical to place this provision in a separate paragraph (paragraph 2) of the Article.

In sub-paragraph (d) of the text of the Questionnaire, it has appeared necessary to make a change in consequence of an observation in one of the replies. The question suggested "that the licensee, if he is the agent of another licensee, should receive a fixed salary in preference to remuneration calculated at a rate per head of workers recruited". This text did not, as the Office understands it, suggest that only the method of payment by fixed salaries should be permitted; without ruling out capitation fees altogether, it expressed a preference for the payment of fixed salaries. Therefore, in view of the suggestion made in the reply above mentioned that it would be more useful to recognise capitation fees and to limit the amount

payable as head money, the Office has redrafted the provision to the following effect : wherever possible, fixed salaries should be paid to recruiting agents, and, if the remuneration takes the form of capitation fees, the maximum amount that may be paid should be limited by the competent authorities. This provision has been placed in paragraph 3 of the Article.

Finally, paragraphs 4, 5 and 6 of the Article contain the provisions relating to the duration of validity of licences, their renewal and their withdrawal ; these provisions reproduce the proposals of the Questionnaire.

## ARTICLE 12

It has been considered more logical to place the provision relating to recruiters' assistants in this Article, which follows those concerned with recruiters and licensing. For the reasons given in Chapter II, the suggestion that recruiters' assistants should wear a badge or uniform has been dropped. The Article, therefore, requires that recruiters' assistants, who are usually persons belonging to indigenous populations and are employed as 'messengers, interpreters and subordinate recruiters, should have to be approved by a public officer and be given a permit by the licensee, who should be held responsible for their proper conduct ; this last provision has been added at the suggestion of one of the Governments.

## ARTICLE 13

This Article deals with the case of worker-recruiters, which it has seemed best to place here as it is in reality an exception to the provisions of Articles 10 and 11. Since it is an exception, and is evidently permissive and not mandatory, there would appear to be no reason why the terms of the Article should not be accepted by States which do not approve of the system of worker-recruiting and have no intention of permitting it in their own territories.

The character of exception of the provision has been indicated at the beginning of the Article, and it is specified in sub-paragraph (b) of the first paragraph that the exception may be made where workers are formally commissioned in writing by their employers to recruit. This form of words has been chosen to meet the observation made in one of the replies that the conditions laid down in the Article should not be applicable to cases where workers, who have returned home, spontaneously bring a few other workers back with them to the undertaking ; in such cases, the workers concerned should not be deemed to be recruiters but agents in promoting the free flow of labour.

In sub-paragraph (a) of paragraph 1, the word " manual " has been omitted as proposed by one of the replies, and an attempt

has been made to express the essential idea that the worker-recruiters should be genuine employees of the undertaking for which they are to recruit by the words "are employed as workers by the undertakings for which they recruit other workers".

Sub-paragraph (b) of Question 17 proposed that worker-recruiters should be required to be in possession of a permit issued by the employer and countersigned by a public officer. In consequence of the objections to the word "permit" and to the requirement of countersigning by a public officer, the word "permit" has been replaced by "commissioned in writing", and the requirement of a countersign has been omitted.

No change has been made in sub-paragraph (c) of paragraph 1, which deals with the remuneration of worker-recruiters.

Paragraph 2 of the Article is new, and has been inserted in consequence of a suggestion in one of the replies that worker-recruiters should not be permitted to make advances of wages.

Paragraph 3 of the Article, which was sub-paragraph (d) in Question 17, has been redrafted to meet the views of several Governments. Instead of limiting recruiting by worker-recruiters to the neighbourhood of their homes, the text proposes that it should be permitted "only within an area to be prescribed by the competent authority".

Finally, sub-paragraph (f) of Question 17, which relates to supervision, has been inserted unchanged as paragraph 4 of the Article.

#### ARTICLE 14

In this Article the Office has grouped the provisions regarding administrative supervision which it seems possible to suggest after an examination of the replies to Questions 21 and 34. The system proposed in these questions was that all recruited workers should be brought before a public officer as near as possible to the place of recruiting; in addition, workers recruited for employment in another territory should be brought before a public officer at the place of departure in order that a further examination of the regularity of the recruiting operations should take place before the departure of the workers was authorised.

The main objections to this system were that it is not always convenient for the workers themselves to bring them before the public officer nearest to the place of recruiting, and that, in the case of migrants, it is sufficient if the regularity of the recruiting is checked at the place of departure.

The Office has endeavoured to meet these objections by providing that recruited workers should be brought before a public officer "as near as may be convenient to the place of recruiting", but that an exception may be made in the case of migrant workers, who should, however, be brought before a public officer at the place of departure.

## ARTICLE 15

The suggestion in Question 22 that recruited workers, who do not sign a contract or are not otherwise definitely engaged at or near the place of recruiting, should be given a document containing particulars which would enable them to be identified, inform them of the prospective conditions of employment, and record any advances of wages made to them, was not unanimously accepted by the Governments. The Office considers, however, that the provision should be inserted in its text in a form requiring the competent authorities to prescribe the issue of such a document "where the circumstances make the adoption of such a provision necessary and practicable", and leaving the contents of the document to the discretion of the authorities.

## ARTICLE 16

The provisions relating to the medical examination of recruited workers have been grouped in this Article. In the Questionnaire the matter was dealt with in two questions, Questions 23 and 35, which proposed the following system: All recruited workers should be first examined as near as possible to the place of recruiting; a second medical examination should take place on arrival at or conveniently near the place of employment; in the case of migrant workers there should also be a medical examination before departure, and an examination on arrival in the territory of employment when the journey is by sea or inland waterway and is of a specified duration.

The objections of the Governments to this system were summarised in Chapter II. Briefly, the only point of general agreement is that recruited workers should be medically examined once. If the employment is not at a considerable distance it is considered to be immaterial where the examination takes place; and even in cases of recruiting for employment at a long distance it is not considered possible to provide that the examination should invariably take place near to the place of recruiting. Further, one of the Governments most directly concerned with the recruiting of migrant workers prefers one medical examination at the place of departure. A second examination is not deemed to be necessary as a general rule.

The text the Office has drafted attempts to meet these objections. It lays down that every recruited worker should be medically examined. If the worker is recruited for employment at a long distance or in the territory of another administration, the examination should take place as near as may be convenient to the place of recruiting or at the place of departure; nevertheless, if this is not possible, the public officer referred to in Article 14 may authorise the departure under certain conditions including that of medical examination on arrival at the place of employment. It is left to the discretion of the competent

authorities to decide whether two medical examinations, the one before departure and the other after arrival at the place of employment, should be required in cases where the conditions and duration of the journey are such as to be liable to affect the health of the workers. Finally, the question of measures of acclimatisation, adaptation and inoculation is left to the competent authorities.

#### ARTICLE 17

This Article deals with the journey of recruited workers to the place of employment and embodies the provisions suggested in Questions 27, 28, 29 and part of 30. It is provided in paragraph 1 that recruited workers should, whenever possible, be transported to the place of employment, and in paragraph 2 that the competent authorities should take all necessary measures to ensure that the welfare of the workers during the journey is safeguarded. The provisions relating to the journeys of recruited workers on foot have been placed in paragraph 3, and paragraph 4 contains, in a form modified to take account of observations in the replies, the idea that groups of workers should be conveyed by a responsible person.

#### ARTICLE 18

The question of the payment by the recruiter or employer of the expenses of the journey of recruited workers to the place of work is the subject of the first paragraph of this Article; the second paragraph provides that everything necessary for the subsistence of the workers during the journey should be supplied to them; the third paragraph contains an exception in the case of recruiting by workers.

In Question 25 (a) the Governments were asked whether they considered that the expenses of the journey of recruited workers to the place of employment and all expenses incurred for the protection of the workers during the journey should be borne by the recruiter or employer. As was seen in Chapter II, one Government is definitely opposed to the assumption of an obligation to impose the application of this principle, on the ground that its application would result in a reduction of wages and in jeopardising the success of a system for encouraging the voluntary movement of labour. This Government is not one that could have recourse to Article 35 (421) of the Constitution in order to modify the provisions of the Convention on this point so as to adapt them to local conditions. It is therefore practically certain that, if the provision proposed in Question 25 (a) were inserted in the Draft Convention without a possibility of making an exception, the Convention would not be ratified by the Government concerned.

In these circumstances, and in accordance with the policy described at the beginning of this chapter, the Office has endeavoured to meet the case of the Government concerned. The first paragraph lays down the obligation suggested in the question ; but in a proviso it is proposed that an exception should be authorised where the payment of travelling expenses by the recruiter or employer is not in accordance with local custom, on condition that the competent authorities are satisfied that one of the elements that have been taken into account in fixing the rates of wages to be paid to the workers is that the latter have to bear the expenses of the journey to the place of employment.

As regards the second paragraph of the Article, it has seemed desirable to amplify the text of the question relating to provisions for the subsistence of recruited workers during the journey in accordance with the suggestions contained in the principle adopted by the Committee of Experts on Native Labour.

The last paragraph lays down that the Article should apply in the case of workers recruited by worker-recruiters "only to the extent to which its application is considered possible and practicable by the competent authority". It will be remembered that, in Question 31, the Governments were asked whether they considered that these provisions, among others, should apply to this special case. The opinion was expressed in the replies that such application would not always be possible, and the Office has accordingly inserted this exception.

#### ARTICLE 19

It has seemed best to include in a separate Article the provisions relating to the cases in which the expenses of returning home recruited workers should be borne by the recruiter or employer. Sub-paragraph (a) is based on a suggestion made in the replies and concerns the case of workers who become incapacitated by sickness or accident during the journey to the place of employment. The case of workers found unfit for employment by medical examination, which was mentioned in Question 25 (b), is contained in sub-paragraph (b). Other suggestions made in the replies have been inserted in sub-paragraphs (c) and (d), i.e. the cases in which the recruiting does not lead to employment for reasons for which the workers are not responsible, and in which it is found that the workers have been recruited by misrepresentation or mistake.

#### ARTICLE 20

Question 24 proposed the limitation and regulation of the making of advances of wages to recruited workers, and also suggested that such advances should be paid whenever possible



in the presence of the public officer referred to in Article 14. This latter suggestion, however, was not favourably received by some of the replies. Article 20, therefore, merely provides that measures should be taken to limit and regulate the amounts and the payment of advances of wages.

#### ARTICLE 21

The question whether, and to what extent, the provisions for the protection of recruited workers should be extended to their families, when the latter have been authorised to accompany the workers to the place of employment, was put to the Governments in Questions 30 and 38. The replies showed considerable variations of opinion, and the Office has concluded that the only obligation likely to find general acceptance is one providing that the competent authorities should take all necessary measures for safeguarding the health and welfare of the families during the journey and, in particular, should apply to them the provisions of Articles 17, 18 and 19. It appears to be desirable to provide that, when workers' families have been authorised to accompany the workers, the same provisions relating to the journey, the payment of travelling expenses and the payment of repatriation expenses should apply to families.

#### ARTICLE 22

The replies of the Governments to Question 32 of the Questionnaire made it clear that a provision requiring agreements between the administrations concerned as a condition of permitting recruiting in one territory for employment in a territory under another administration would not be acceptable to some of the Governments most directly affected, and it was suggested, in discussing the replies, that a solution might be found in a combination of the proposal of Question 32 with the idea underlying Question 37. This solution the Office has tried to formulate in Article 22.

In the first paragraph of this Article it is provided that, before permitting recruiting for employment in another territory, the administration of the territory of recruiting should satisfy itself that proper care will be taken of the workers when they are no longer within its territorial jurisdiction. This provision seems to go as far as it is possible to go in imposing an obligation to take the unilateral measures suggested in Question 37. It means that an administration of a country which has ratified the Convention, and which will have provided for the application of its provisions within its own territory, should be satisfied that measures equivalent to those prescribed by the Convention have been taken for the protection of the

recruited workers when the latter have come within the jurisdiction of another administration.

In appropriate cases, but not as an invariable rule, administrations could make recruiting for employment in another territory dependent upon the conclusion of agreements. This idea is expressed in the second paragraph of this Article, which reproduces, in an optional form, the substance of Question 32.

Finally, as special provisions regarding the methods of organising the recruiting of migrant workers, the Office has embodied in the paragraphs 3 and 4 the ideas of Question 33, with certain modifications based on observations made in the replies. It will be observed that the order of the ideas has been inverted. Paragraph 3 provides that recruiting for employment in another territory should be undertaken only under licence issued by the competent authority of the territory of recruiting, provided that licences issued by the competent authority of the territory of employment may be recognised as equivalent. Paragraph 4 provides that in certain circumstances recruiting may only be undertaken by organisations approved by the authorities of the territory of recruiting. The fundamental purpose of these provisions is to suggest that recruiting for employment abroad could best be undertaken by responsible organisations (i.e. organisations of employers), and that, in any case, the territory of recruiting should maintain control over recruiting.

#### ARTICLE 23

The question of general exceptions to the application of the Convention was raised in the Questionnaire in Questions 3 and 4 in the form of exceptions to the definition of "recruiting". In view of the replies, it has seemed to the Office to be better to propose another method, and to group the general exceptions in the present Article as permissive exceptions to the regulation of recruiting in accordance with the Convention. Various changes and additions have also been made.

For the reasons given in Chapter II, the details of the application of these exceptions have been left to the competent authorities. Moreover, to take account of a remark made in the replies, it has been specified that the exceptions cover recruiting operations undertaken on behalf of, as well as by, employers. Sub-paragraph (a) provides for an exception in the case of employers who do not employ more than such limited number of workers as the competent authorities may specify. The formula used in sub-paragraph (b) is perhaps more acceptable than that of the Questionnaire; it provides an exception for recruiting within such limited radius from the place of employment as may be specified by the authorities. Sub-paragraph (c) introduces an exception, suggested in one of the replies, for personal and domestic servants and for non-manual workers. The possibility of making this latter exception would not seem

to weaken the Convention in any essential respect, more particularly as the numbers of genuine personal and domestic servants, and of non-manual workers, cannot be large.

## ARTICLE 24

As drafted in the text submitted to the Conference, this Article relating to the application of Article 35 (421) of the Constitution becomes definitely a procedure Article. Having regard to the views expressed in the replies, which were discussed at some length in Chapter II, it has appeared to the Office that an Article drafted in the form suggested would provide the most convenient and useful manner of enabling States which administer dependent territories to declare, at the time of ratification, the extent to which their dependent territories will be affected by ratification. A text in this form in no way prejudices the interpretation of Article 35 (421).

The draft Article does not require much comment. Under sub-paragraph (a) of the first paragraph the ratifying State would give a list of the territories to which the Convention would be applied without change. As stated at the beginning of this chapter, the Office has endeavoured to draft the proposed Convention so that the need for modifications in order to adapt it to local conditions may be reduced to a minimum. Nevertheless, the power to make such modifications is given by Article 35 (421) and the intention to make use of this power would be declared under sub-paragraph (b) of paragraph 1 of this Article and details of the modifications would be given. Under sub-paragraph (c) would be declared the territories to which the Convention is inapplicable and, following a suggestion in one of the replies, it is provided that the grounds on which it is inapplicable should be stated. Finally, under sub-paragraph (d), the decision of the ratifying State could be reserved.

Paragraph 2 of this Article is intended to make it clear that when a Government gives an undertaking to apply the provisions of the Convention, whether with or without modification, to any territory, it assumes a definite international obligation to apply the Convention in that territory.

By the third paragraph of the Article it is provided that any declaration made under sub-paragraphs (b), (c), and (d) of paragraph 1 could be cancelled by a subsequent declaration.

## Commentary on the Draft Recommendation

The Committee of the 1935 Conference decided that the principles of policy for facilitating the accompanying of recruited workers by their families suggested by the Committee of Experts on Native Labour should be put before the Governments in the form of a question intended to lead to the adoption

of a Recommendation ; it also added two new points relating to the right to acquire immovable property and to schooling facilities.

As was noted in Chapter II, the replies of the Governments, with one exception, were favourable, subject to certain observations concerning the extent to which the policies recommended could be applied. Since, however, the form of a Recommendation is essentially adapted to the declaration of policies for the application of which the States are unable to assume binding obligations, and the acceptance of a Recommendation only involves an obligation to give consideration to the application of its principles in suitable circumstances, the Office has not considered it necessary to make other than slight drafting changes in the terms of Question 41.

The text submitted to the Conference links up the proposed Recommendation with the proposed Draft Convention, refers to the provisions of the Draft Convention which deal with the encouragement of recruited workers to be accompanied by their families, and presents the recommendations as supplementary principles of policy for facilitating the application of these provisions.

\* \* \*

Accordingly, the Office submits to the Conference for examination the following proposals for a Draft Convention and a Recommendation.

## PROPOSED DRAFT CONVENTION CONCERNING THE REGULATION OF CERTAIN SPECIAL SYSTEMS OF RECRUITING WORKERS

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### ARTICLE 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to regulate in accordance with the following provisions the recruiting of indigenous workers in each of its territories in which such recruiting exists or may hereafter exist.

### ARTICLE 2

For the purposes of this Convention :

- (a) the term "recruiting" includes all operations undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services at the place of employment or at a public emigration or employment office or at an office conducted by an employers' organisation and supervised by the competent authority ;
- (b) the term "indigenous workers" includes persons belonging to or assimilated to the indigenous populations of dependent territories and persons belonging to or assimilated to the dependent indigenous populations of fully self-governing countries.

### ARTICLE 3

Before approving for any area any scheme of economic development which is likely to involve the recruiting of labour, the competent authority shall take such measures as may be necessary and practicable :

- (a) to avoid the risk of improper pressure being brought to bear on the populations concerned by or on behalf of the employers in order to obtain the labour required ;
- (b) to ensure that, as far as possible, the political and social organisation of the populations concerned and their powers of adjustment to the changed economic conditions will not be endangered by the demand for labour ; and
- (c) to deal with any other possible untoward effects of such development on the populations concerned.

# AVANT-PROJET DE CONVENTION CONCERNANT LA RÉGLEMENTATION DE CERTAINS SYSTÈMES PARTICULIERS DE RECRUTEMENT DES TRAVAILLEURS

## ARTICLE 1

Tout Membre de l'Organisation internationale du Travail qui ratifie la présente convention s'engage à réglementer conformément aux dispositions ci-après le recrutement des travailleurs indigènes dans chacun de ses territoires où un tel recrutement existe ou pourrait ultérieurement exister.

## ARTICLE 2

Aux fins de la présente convention :

- a) le terme « recrutement » comprend toutes opérations entreprises dans le but de s'assurer ou de procurer à autrui la main-d'œuvre de personnes n'offrant pas spontanément leurs services soit au lieu du travail, soit dans un bureau public d'émigration ou de placement, soit dans un bureau dirigé par une organisation patronale et soumise au contrôle de l'autorité compétente ;
- b) le terme « travailleurs indigènes » comprend toutes personnes appartenant, ou assimilées, à la population indigène d'un territoire non indépendant, ainsi que toutes personnes appartenant, ou assimilées, à la population indigène non indépendante d'un pays se gouvernant pleinement lui-même.

## ARTICLE 3

Avant d'approuver, pour une région, tout plan de développement économique de nature à entraîner des recrutements de main-d'œuvre, l'autorité compétente doit prendre toutes mesures qui pourraient être nécessaires et réalisables :

- a) pour éviter de risquer qu'une contrainte irrégulière soit exercée sur les collectivités intéressées, par les employeurs ou en leur nom, afin d'obtenir la main-d'œuvre nécessaire ;
- b) pour assurer, dans toute la mesure du possible, que l'organisation politique et sociale desdites collectivités, ainsi que leurs facultés d'adaptation aux conditions économiques nouvelles, ne risquent pas d'être compromises par ces appels à la main-d'œuvre ;
- c) pour parer à toutes autres conséquences fâcheuses que ce développement économique pourrait entraîner à l'égard des collectivités intéressées.

#### ARTICLE 4

1. Before granting permission to recruit labour in any area, the competent authority shall take into consideration the possible effects of the withdrawal of adult males on the social life of the populations concerned, and in particular shall consider :

- (a) the density of the population, its tendency to increase or decrease, and the probable effect upon the birth-rate of the withdrawal of adult males ;
- (b) the possible effects of the withdrawal of adult males on the health, welfare and development of the populations concerned, particularly in connection with the food supply :
- (c) the dangers to the family and morality arising from the withdrawal of adult males ; and
- (d) the possible effects of the withdrawal of adult males on the social organisation of the populations concerned.

2. Where the circumstances make the adoption of such a policy necessary and practicable, the competent authority shall, in order to safeguard the populations concerned against any untoward consequences of the withdrawal of adult males, fix the maximum number of adult males who may be recruited in any given social unit in such manner that the number of adult males remaining in the said unit does not fall below a prescribed percentage of the normal proportion of adult males to women and children.

#### ARTICLE 5

1. Where the circumstances make the adoption of such a policy practicable and desirable, the competent authority shall encourage recruited workers to be accompanied by their families, more particularly in the case of workers recruited for agricultural or similar employment at a long distance from their homes and for periods exceeding a specified duration.

2. Recruited workers shall not be separated from wives and minor children who have been authorised to accompany the workers to, and to remain with the workers at, the place of employment.

#### ARTICLE 6

Where the circumstances make the adoption of such a policy practicable and desirable, recruited workers shall be grouped at the place of employment under suitable ethnic conditions.

#### ARTICLE 4

1. Avant de donner son autorisation à un recrutement de main-d'œuvre dans une région, l'autorité compétente doit prendre en considération les répercussions possibles du départ des adultes du sexe masculin sur la vie sociale de la collectivité intéressée, en tenant compte notamment des points suivants :

- a) densité de la population, sa tendance à l'accroissement ou à la diminution, et effets probables de l'éloignement des adultes du sexe masculin sur le taux de la natalité ;
- b) effets possibles de cet éloignement sur les conditions d'hygiène, de bien-être et de développement de la collectivité intéressée, particulièrement en ce qui concerne ses moyens de subsistance ;
- c) dangers provenant de cet éloignement en ce qui concerne les conditions familiales et morales ;
- d) effets possibles de cet éloignement sur l'organisation sociale de la collectivité intéressée.

2. Lorsque les circonstances rendent l'adoption d'une telle politique nécessaire et réalisable, l'autorité compétente doit, pour protéger les collectivités intéressées contre toutes répercussions fâcheuses du départ des adultes du sexe masculin, fixer le nombre maximum des adultes du sexe masculin qui peuvent être recrutés dans une unité sociale donnée, de manière que le nombre des adultes du sexe masculin laissés dans cette unité ne tombe pas au-dessous d'un pourcentage déterminé de la proportion normale des adultes du sexe masculin par rapport aux femmes et aux enfants.

#### ARTICLE 5

1. Lorsque les circonstances rendent l'adoption d'une telle politique réalisable et désirable, l'autorité compétente doit encourager les travailleurs recrutés à se faire accompagner par leur famille, plus particulièrement lorsque ces travailleurs sont recrutés en vue d'un travail agricole ou analogue à exécuter à une grande distance de leur foyer et pour des périodes dépassant une durée déterminée.

2. Les travailleurs recrutés ne doivent pas être séparés de leurs femmes et de leurs enfants mineurs autorisés à les accompagner au lieu du travail et à y demeurer avec eux.

#### ARTICLE 6

Lorsque les circonstances rendent l'adoption d'une telle politique réalisable et désirable, les travailleurs recrutés doivent être groupés sur le lieu du travail d'après leurs affinités ethniques.



#### ARTICLE 7

Public officers shall not recruit for private undertakings, either directly or indirectly, except when the recruited workers are to be employed on works of public utility for the execution of which private undertakings are acting as contractors for a public authority.

#### ARTICLE 8

Chiefs or other indigenous authorities shall not

- (a) act as recruiting agents ;
- (b) exercise pressure upon possible recruits ; or
- (c) receive any special remuneration for assistance in recruiting.

#### ARTICLE 9

No person or association shall engage in professional recruiting unless the said person or association has been licensed by the competent authority and is acting on behalf of an administration or of one or more specific employers or organisations of employers.

#### ARTICLE 10

Employers, employers' agents, organisations of employers, organisations subsidised by employers, and the agents of organisations of employers and of organisations subsidised by employers, shall only engage in recruiting if licensed by the competent authority.

#### ARTICLE 11

1. Before issuing any licence for recruiting the competent authority shall :

- (a) satisfy itself that the applicant for a licence, if an individual, is a fit and proper person ;
- (b) require the applicant for a licence, if an individual or a professional recruiting association, to deposit with it financial or other security for proper conduct as a licensee ; and
- (c) satisfy itself that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited.

2. Licensees shall keep, in such form as the competent authority may prescribe, records from which the regularity of

#### ARTICLE 7

Les fonctionnaires publics ne doivent pas recruter, soit directement, soit indirectement, pour les entreprises privées, sauf dans le cas où les travailleurs recrutés doivent être employés à des travaux d'utilité publique dont l'exécution est confiée à des entreprises privées pour le compte d'une autorité publique.

#### ARTICLE 8

Les chefs et autres autorités indigènes ne doivent pas

- a) faire acte d'agents de recrutement ;
- b) exercer une pression sur les recrues éventuelles ;
- c) recevoir une rémunération spéciale pour avoir contribué au recrutement.

#### ARTICLE 9

Aucune personne ou société ne doit faire acte de recrutement professionnel à moins que ladite personne ou société n'ait été munie d'une licence par les soins de l'autorité compétente et n'agisse soit au nom d'une administration, soit au nom d'un ou plusieurs employeurs ou d'organisations d'employeurs déterminés.

#### ARTICLE 10

Les employeurs, agents des employeurs, organisations d'employeurs, organisations subventionnées par les employeurs, agents des organisations d'employeurs et des organisations subventionnées par les employeurs, ne peuvent faire acte de recrutement que s'ils ont été munis d'une licence par les soins de l'autorité compétente.

#### ARTICLE 11

1. Avant de délivrer une licence de recrutement, l'autorité compétente doit :

- a) s'assurer que le requérant, s'il s'agit d'un particulier, possède les aptitudes nécessaires et offre des garanties suffisantes ;
- b) obliger le requérant, s'il s'agit d'un particulier ou d'une société faisant acte de recrutement professionnel, à déposer une garantie financière ou autre pour la bonne exécution de ses obligations en tant que titulaire de la licence ;
- c) s'assurer que toutes dispositions nécessaires ont été prises pour protéger la santé et le bien-être des travailleurs à recruter.

2. Les titulaires de licence doivent tenir, selon le mode approuvé par l'autorité compétente, un registre permettant de

every recruiting operation can be verified and every recruited worker can be identified.

3. A licensee who is the agent of another licensee shall wherever possible receive a fixed salary, and in any case in which he receives remuneration calculated at a rate per head of workers recruited such remuneration shall not exceed a maximum prescribed by the competent authority.

4. The validity of licences shall be limited to a fixed period prescribed by the competent authority.

5. The renewal of licences shall be conditional upon the manner in which the licensee has respected the conditions subject to which the licence was issued.

6. The competent authority shall be entitled

- (a) to withdraw any licence if the licensee has been guilty of any offence or misconduct unfitting him to conduct recruiting operations; and
- (b) to suspend any licence pending the result of any enquiry into the conduct of the licensee.

## ARTICLE 12

1. No person shall assist a licensee in a subordinate capacity in the actual recruiting operations unless he has been approved by a public officer and has been furnished with a permit by the licensee.

2. Licensees shall be responsible for the proper conduct of such assistants.

## ARTICLE 13

1. The competent authority may exempt from the obligation to hold a licence worker-recruiters who

- (a) are employed as workers by the undertakings for which they recruit other workers;
- (b) are formally commissioned in writing by the employer to recruit; and
- (c) do not receive remuneration of such a nature or amount as to constitute an inducement to deceive prospective recruits regarding the conditions of employment.

2. Worker-recruiters shall not make advances of wages to recruits.

3. Worker-recruiters may recruit only within an area to be prescribed by the competent authority.

vérifier la régularité de toute opération de recrutement et d'identifier chaque travailleur recruté.

3. Tout titulaire de licence, qui est l'agent d'un autre titulaire, doit, autant que possible, recevoir un salaire fixe ; mais s'il reçoit une rémunération proportionnelle au nombre de travailleurs recrutés, cette rémunération ne doit pas dépasser un maximum à fixer par l'autorité compétente.

4. La validité des licences doit être limitée à une période déterminée à fixer par l'autorité compétente.

5. Le renouvellement des licences doit être subordonné à la manière dont les titulaires ont respecté les conditions fixées pour la délivrance desdites licences.

6. L'autorité compétente doit avoir le droit :

- a) de retirer une licence si le titulaire s'est rendu coupable d'une infraction ou faute de nature à le disqualifier en matière de recrutement ;
- b) de suspendre une licence en attendant le résultat de toute enquête ouverte sur les actes du titulaire de ladite licence.

## ARTICLE 12

1. Aucune personne ne doit aider, à titre subalterne, le titulaire d'une licence dans les opérations mêmes du recrutement, si cette personne n'a pas été agréée par un fonctionnaire public et munie d'un permis par les soins du titulaire de la licence.

2. Tout titulaire de licence sera responsable de la correction de la conduite de ses auxiliaires.

## ARTICLE 13

1. L'autorité compétente peut exempter de l'obligation de la licence les travailleurs-recruteurs :

- a) qui sont employés comme travailleurs par l'entreprise pour laquelle ils recrutent d'autres travailleurs ;
- b) qui sont expressément chargés par l'employeur, aux termes d'un document écrit, de recruter d'autres travailleurs ;
- c) qui ne reçoivent pas une rémunération susceptible, par sa nature ou son montant, de les inciter à tromper les recrues éventuelles sur les conditions de leur travail.

2. Les travailleurs-recruteurs ne doivent pas faire d'avances sur salaires aux recrues.

3. Les travailleurs-recruteurs ne doivent pouvoir recruter que dans une région à déterminer par l'autorité compétente.

4. The operations of worker-recruiters shall be supervised in a manner to be prescribed by the competent authority.

#### ARTICLE 14

1. Recruited workers shall be brought before a public officer, who shall satisfy himself that the law and regulations concerning recruiting have been observed and, in particular, that the workers have not been subjected to illegal pressure or recruited by misrepresentation or mistake.

2. Recruited workers shall be brought before such an officer as near as may be convenient to the place of recruiting or, in the case of workers recruited in one territory for employment in a territory under a different administration, at latest at the place of departure from the territory of recruiting.

#### ARTICLE 15

Where the circumstances make the adoption of such a provision necessary and practicable, the competent authority shall require the issue to each recruited worker who is not engaged at or near the place of recruiting of a document in writing such as a memorandum of information, a work book or a provisional contract, containing such particulars as the authority may prescribe, as for example particulars of the identity of the worker, the prospective conditions of employment, and any advances of wages made to the worker.

#### ARTICLE 16

1. Every recruited worker shall be medically examined.

2. Where the worker has been recruited for employment at a distance from the place of recruiting or in the territory of another administration, the medical examination shall take place as near as may be convenient to the place of recruiting or at the place of departure.

3. The competent authority may empower public officers before whom workers are brought in pursuance of Article 14 to authorise the departure prior to medical examination of workers in whose case they are satisfied

- (a) that it was and is impossible for the medical examination to take place near to the place of recruiting or at the place of departure ;
- (b) that the worker is fit for the journey and the prospective employment ; and

4. Les opérations des travailleurs-recruteurs doivent être contrôlées de la manière prévue par l'autorité compétente.

#### ARTICLE 14

1. Les travailleurs recrutés doivent être présentés à un fonctionnaire public qui s'assurera que les prescriptions de la législation en matière de recrutement ont été observées et, en particulier, que les travailleurs n'ont pas été soumis à une pression illicite, ni recrutés par fraude ou erreur.

2. Les travailleurs recrutés doivent être présentés à ce fonctionnaire aussi près du lieu du recrutement qu'il est possible et expédient ou, lorsqu'il s'agit de travailleurs recrutés dans un territoire pour être employés dans un autre territoire soumis à une administration différente, au plus tard au lieu du départ du territoire de recrutement.

#### ARTICLE 15

Lorsque les circonstances rendent l'adoption d'une telle mesure nécessaire et réalisable, l'autorité compétente doit imposer la délivrance, à tout travailleur recruté dont l'engagement ne se fait pas sur le lieu même du recrutement ou auprès de ce lieu, d'un document écrit tel que certificat d'embauchage, livret de travail ou contrat provisoire, contenant telles mentions que l'autorité compétente pourra prescrire, par exemple les indications d'identité du travailleur, les conditions de l'emploi envisagé et toutes avances sur salaire consenties au travailleur.

#### ARTICLE 16

1. Tout travailleur recruté doit être soumis à un examen médical.

2. Lorsque le travailleur a été recruté pour travailler dans un lieu éloigné de l'endroit du recrutement ou dans un territoire soumis à une administration différente, l'examen médical doit être passé aussi près du lieu du recrutement qu'il est possible et expédient ou au lieu du départ du travailleur.

3. L'autorité compétente peut donner au fonctionnaire public auquel les travailleurs recrutés doivent être présentés conformément à l'article 14 le droit d'autoriser le départ de ces travailleurs avant tout examen médical à condition qu'il se soit assuré :

- a) qu'il était et demeure impossible de soumettre ces travailleurs à un examen médical auprès du lieu du recrutement ou au lieu du départ ;
- b) que chaque travailleur est physiquement apte à voyager et à remplir son emploi futur ;

(c) that the worker will be medically examined on arrival at the place of employment or as soon as possible thereafter.

4. The competent authority may, particularly when the journey of the recruited workers is of such duration and takes place under such conditions that the health of the workers is likely to be affected, require recruited workers to be examined both before departure and after arrival at the place of employment.

5. The competent authority shall take all necessary measures for the acclimatisation and adaptation of recruited workers and for their immunisation against disease.

#### ARTICLE 17

1. The recruiter or employer shall whenever possible provide transport to the place of employment for recruited workers.

2. The competent authority shall take all necessary measures to ensure

(a) that the vehicles or vessels used for the transport of workers are suitably adapted for such transport, are in good sanitary condition and are not overcrowded ;

(b) that when it is necessary to break the journey for the night suitable accommodation is provided for the workers ; and

(c) that in the case of long journeys all necessary arrangements are made for medical assistance and for the welfare of the workers.

3. When recruited workers have to make long journeys on foot to the place of employment, the competent authority shall take all necessary measures to ensure

(a) that the length of the daily journey is compatible with the maintenance of the health and strength of the workers ; and

(b) that rest camps or rest houses are provided at suitable points on main routes where the extent of the movement of labour makes this necessary, and are kept in proper sanitary condition and have the necessary facilities for medical attention.

4. When recruited workers have to make long journeys in groups to the place of employment, they shall be convoyed by a responsible person.

- c) que chaque travailleur passera un examen médical à son arrivée sur le lieu du travail ou dans un délai aussi court que possible après son arrivée.

4. L'autorité compétente peut, notamment lorsque le voyage des travailleurs recrutés est d'une telle durée ou se fait dans de telles conditions que leur santé puisse en être affectée, prescrire que les travailleurs recrutés soient soumis à un examen médical avant leur départ et à un second examen après leur arrivée sur le lieu de l'emploi.

5. L'autorité compétente doit prendre toutes mesures nécessaires en vue de l'acclimatement et de l'adaptation des travailleurs recrutés et leur faire subir les diverses vaccinations préventives.

#### ARTICLE 17

1. Le recruteur ou l'employeur doit, chaque fois qu'il est possible, faire transporter les travailleurs recrutés jusqu'au lieu du travail.

2. L'autorité compétente doit prendre toutes mesures nécessaires afin que :

- a) les véhicules ou bateaux utilisés pour le transport des travailleurs soient convenablement adaptés à cet office, qu'ils offrent de bonnes conditions d'hygiène et une capacité de transport suffisante ;
- b) lorsque les travailleurs doivent passer la nuit en cours de route, des installations appropriées aient été prévues ;
- c) lorsqu'il s'agit de longs trajets à parcourir, toutes les dispositions nécessaires aient été prises pour assurer aux travailleurs des soins médicaux et un bien-être suffisant.

3. Lorsque les travailleurs recrutés doivent parcourir de longues distances à pied pour se rendre au lieu du travail, l'autorité compétente doit prendre toutes mesures nécessaires afin que :

- a) la durée des étapes quotidiennes reste compatible avec le maintien de la santé et des forces des travailleurs ;
- b) lorsque l'amplitude du déplacement de main-d'œuvre impose de telles mesures, des camps de repos ou gîtes d'étape aient été établis à des endroits convenables le long des routes principales et qu'ils soient tenus dans un état de propreté suffisante et munis de tout le matériel médical indispensable.

4. Lorsque les travailleurs recrutés voyagent en groupe pour se rendre au lieu du travail et qu'ils ont de longs trajets à parcourir, ils doivent être accompagnés par un convoyeur responsable.



## ARTICLE 18

1. The expenses of the journey of recruited workers to the place of employment, including all expenses incurred for their protection during the journey, shall be borne by the recruiter or employer : Provided that where this requirement is not in accordance with local custom it may be waived by the competent authority if the authority is satisfied that the employers have in fixing wage rates made reasonable allowance for the expenses of the workers in connection with their journey.

2. The recruiter or employer shall furnish recruited workers with everything necessary for their welfare during the journey to the place of employment, including particularly, as local circumstances may require, adequate and suitable supplies of food, drinking water, fuel and cooking utensils, clothing and blankets.

3. This Article applies to workers recruited by worker-recruiters only to the extent to which its application is considered possible and practicable by the competent authority.

## ARTICLE 19

Any recruited worker who

- (a) becomes incapacitated by sickness or accident during the journey to the place of employment ;
  - (b) is found on medical examination to be unfit for employment;
  - (c) is not engaged after recruitment for a reason for which he is not responsible ; or
  - (d) is found by the competent authority to have been recruited by misrepresentation or mistake,
- shall be repatriated at the expense of the recruiter or employer.

## ARTICLE 20

The competent authority shall limit the amount which may be paid to recruited workers in respect of advances of wages and regulate the conditions under which such advances may be made.

## ARTICLE 21

Where the families of recruited workers have been authorised to accompany the workers to the place of employment, the competent authority shall take all necessary measures for safeguarding their health and welfare during the journey and more particularly

## ARTICLE 18

1. Les frais de voyage des travailleurs recrutés jusqu'au lieu du travail, ainsi que tous les frais entraînés par leur protection pendant le voyage, doivent incomber au recruteur ou à l'employeur. Toutefois, l'autorité compétente peut admettre qu'il soit dérogé à cette règle lorsque celle-ci ne sera pas conforme à la coutume locale et à condition que cette autorité se soit assurée que les employeurs, en fixant les taux de salaire, ont tenu un compte raisonnable des dépenses qui incombent aux travailleurs du fait de leur voyage.

2. Le recruteur ou l'employeur doit fournir aux travailleurs recrutés tout ce qui peut être nécessaire à leur entretien pendant le voyage jusqu'au lieu du travail, par exemple, et suivant les conditions locales, des vivres suffisants et appropriés, de l'eau potable, des ustensiles de cuisine et du combustible, des vêtements et des couvertures.

3. Cet article s'applique aux travailleurs recrutés par des travailleurs-recruteurs dans la mesure où son application est considérée comme possible et réalisable par l'autorité compétente.

## ARTICLE 19

Tout travailleur recruté

- a) qui se trouve frappé d'incapacité, soit par accident, soit par maladie, au cours de son voyage jusqu'au lieu du travail,
  - b) qui est déclaré inapte au travail à la suite d'un examen médical,
  - c) qui ne se trouve pas engagé, postérieurement à son recrutement, pour une cause dont il n'est pas responsable,
  - d) dont l'autorité compétente constate qu'il a été recruté par fraude ou par erreur,
- doit être rapatrié aux frais du recruteur ou de l'employeur.

## ARTICLE 20

L'autorité compétente doit limiter la somme qui peut être payée aux travailleurs recrutés, à titre d'avances sur salaire, et réglementer les conditions dans lesquelles ces avances sont faites.

## ARTICLE 21

Lorsque les familles de travailleurs recrutés ont été autorisées à accompagner ces derniers sur le lieu du travail, l'autorité compétente doit prendre les mesures nécessaires pour sauvegarder leur santé et leur bien-être pendant leur voyage. En particulier :

- (a) Articles 17 and 18 of this Convention shall apply to such families ; and
- (b) in the event of the worker being repatriated in virtue of Article 19, his family shall also be repatriated.

## ARTICLE 22

1. Before permitting the recruiting of workers for employment in a territory under a different administration, the competent authority of the territory of recruiting shall satisfy itself that all necessary measures have been taken for the protection of the recruited workers in accordance with the provisions of this Convention when the workers have travelled beyond its jurisdiction.

2. Where workers are recruited in one territory for employment in a territory under a different administration and the circumstances and amount of recruiting appear to the competent authorities concerned to necessitate such action, the said authorities shall enter into agreements defining the extent to which such recruiting is to be permitted and providing for co-operation between them in supervising the execution of the conditions of recruiting and employment.

3. The recruiting of workers in one territory for employment in a territory under a different administration shall be undertaken only under licence issued by the competent authority of the territory of recruiting : Provided that the said authority may accept as equivalent to a licence issued by it a licence issued by the competent authority of the territory of employment.

4. Where the circumstances and the amount of recruiting for employment in a territory under a different administration appear to the competent authority of the territory of recruiting to necessitate such action, the said authority shall provide that such recruiting shall only be undertaken by organisations approved by it.

## ARTICLE 23

The competent authority may exempt from the application of this Convention the following classes of recruiting operations :

- (a) operations undertaken by or on behalf of employers who do not employ more than a prescribed limited number of workers ;

- a) les articles 17 et 18 de la présente convention doivent s'appliquer à ces familles ;
- b) dans l'éventualité du rapatriement du travailleur en vertu de l'article 19, la famille de ce travailleur doit être également rapatriée.

## ARTICLE 22

1. Avant d'autoriser le recrutement de travailleurs destinés à être employés dans un territoire soumis à une administration différente, l'autorité compétente du territoire de recrutement doit s'assurer que toutes mesures nécessaires ont été prises pour réaliser, conformément aux dispositions de la présente convention, la protection des travailleurs recrutés, dès le moment où ces travailleurs ne se trouvent plus sous la juridiction de cette autorité.

2. Lorsque des travailleurs sont recrutés dans un territoire pour être employés dans un autre territoire soumis à une administration différente, et que les autorités compétentes des deux territoires intéressés estiment que les circonstances et l'importance de ce recrutement rendent de telles mesures nécessaires, ces autorités doivent conclure des accords fixant dans quelles mesures ce recrutement pourra être autorisé et instituant entre elles une coopération pour assurer le contrôle de l'exécution des conditions du recrutement et de l'emploi.

3. Le recrutement des travailleurs dans un territoire en vue de leur emploi dans un autre territoire soumis à une administration différente ne doit pouvoir être effectué qu'en vertu d'une licence délivrée par l'autorité compétente du territoire de recrutement. Toutefois, ladite autorité peut admettre comme équivalant à une licence délivrée par elle une licence délivrée par l'autorité compétente du territoire de l'emploi.

4. Lorsque l'autorité compétente du territoire de recrutement estime que les circonstances et l'importance du recrutement sur son territoire, de travailleurs destinés à être employés dans un autre territoire soumis à une administration différente rendent nécessaires de telles mesures, ladite autorité doit stipuler que le recrutement ne doit être entrepris que par des organisations agréées par elle.

## ARTICLE 23

L'autorité compétente peut exempter de l'application de la présente convention les catégories suivantes d'opérations de recrutement :

- a) opérations entreprises par ou au nom d'employeurs qui n'emploient pas un nombre de travailleurs supérieur à un chiffre à fixer limitativement ;

- (b) operations undertaken within a prescribed limited radius from the place of employment; and
- (c) operations for the engagement of personal and domestic servants and of non-manual workers.

#### ARTICLE 24

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation, each Member of the Organisation concerned which ratifies this Convention shall append to its ratification a declaration stating :

- (a) the territories to which it undertakes to apply the provisions of the Convention without modification;
- (b) the territories to which it undertakes to apply the provisions of the Convention subject to modifications, together with details of the said modifications;
- (c) the territories to which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- (d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of sub-paragraphs (b), (c) or (d) of paragraph 1 of this Article.

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- b) opérations entreprises dans un rayon déterminé, à fixer, du lieu où le travail doit être exécuté ;
- c) opérations entreprises en vue de l'engagement de travailleurs affectés à un service personnel ou domestique et de travailleurs non manuels.

#### ARTICLE 24

1. En ce qui concerne les territoires mentionnés par l'article 35 de la Constitution de l'Organisation internationale du Travail, tout Membre de l'Organisation qui ratifie la présente convention doit accompagner sa ratification d'une déclaration faisant connaître :

- a) les territoires dans lesquels il s'engage à appliquer sans modifications les dispositions de la convention ;
- b) les territoires dans lesquels il s'engage à appliquer les dispositions de la convention avec des modifications, et en quoi consistent lesdites modifications ;
- c) les territoires auxquels la convention est inapplicable et, dans ces cas, les raisons pour lesquelles elle est inapplicable ;
- d) les territoires pour lesquels il réserve sa décision.

2. Les engagements mentionnés aux sous-paragraphes a) et b) du premier paragraphe du présent article seront réputés partie intégrante de la ratification et porteront des effets identiques.

3. Tout Membre pourra renoncer par une nouvelle déclaration à tout ou partie des réserves contenues dans sa déclaration antérieure en vertu des sous-paragraphes b), c) ou d) du paragraphe premier du présent article.

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## PROPOSED RECOMMENDATION CONCERNING THE GRANTING OF CERTAIN FACILITIES TO RECRUITED WORKERS AND THEIR FAMILIES

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The Conference,

Having adopted a Draft Convention concerning the regulation of certain special systems of recruiting workers,

Considering that this Draft Convention contains provisions relating to the encouragement, in certain circumstances, of recruited workers to be accompanied by their families, and

Desiring to supplement these provisions by recommendations concerning the methods by which the accompanying of recruited workers by their families might be facilitated,

Recommends that each Member of the International Labour Organisation concerned should take steps :

- (a) where the policy of the competent authorities is to establish a working population in the areas of employment, to provide land (preferably public land) for the settlement of recruited workers and their families ;
  - (b) to assure to recruited workers the right to acquire immovable property ;
  - (c) to provide land for the cultivation of food supplies, even where recruited workers accompanied by their families are intended to remain in the area of employment only for the duration of the employment ;
  - (d) to provide schooling facilities for the children of recruited workers.
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## PROJET DE RECOMMANDATION CONCERNANT CERTAINES FACILITÉS A ACCORDER AUX TRAVAILLEURS RECRUTÉS ET A LEURS FAMILLES

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La Conférence,

Ayant adopté un projet de convention concernant la réglementation de certains systèmes particuliers de recrutement des travailleurs,

Considérant que ce projet de convention comporte des dispositions prévoyant que dans certains cas les travailleurs recrutés devront être encouragés à se faire accompagner par leurs familles, et

Désirant compléter ces dispositions par des recommandations concernant les méthodes les plus aptes à faciliter l'accompagnement des travailleurs recrutés par leurs familles,

Recommande à chaque Membre de l'Organisation internationale du Travail de prendre des mesures en vue de :

- a) la mise de terrains (de préférence domaniaux) à la disposition des travailleurs recrutés et de leurs familles pour les y installer, lorsque la politique des autorités compétentes tend à stabiliser la main-d'œuvre dans le voisinage des entreprises ;
- b) l'octroi aux travailleurs recrutés de la faculté d'acquérir des droits de propriété sur des biens immeubles ;
- c) la mise de terres à la disposition des intéressés pour y cultiver les produits vivriers indispensables, même lorsque les travailleurs recrutés accompagnés par leurs familles ne doivent rester sur le lieu de l'emploi que pendant la durée de cet emploi ;
- d) l'octroi de facilités scolaires en faveur des enfants des travailleurs recrutés.